Western Australia

Land Administration Act 1997

Compare between:

[24 Mar 2023, 07-e0-00] and [10 Aug 2023, 07-f0-01]

Western Australia

Land Administration Act 1997

An Act to consolidate and reform the law about Crown land and the compulsory acquisition of land generally, to repeal the *Land Act 1933* and to provide for related matters.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Land Administration Act 1997*.

2. Commencement

(1) Subject to subsection (2), this Act comes into operation on such day as is fixed by proclamation.

(2) Subject to section 22 of the *Interpretation Act 1984*, this Act is not to come into operation until all the provisions of the *Transfer of Land Amendment Act 1996* have come into operation.

3. Terms used

(1) In this Act, unless the contrary intention appears —

adjoining, in relation to parcels of Crown land, includes only separated by —

(a) roads; or

(b) railways; or

(c) watercourses or other natural features of such a character as to be insufficient to prevent the passage of stock; or

(d) reserves or unallocated Crown land;

alienated land means land held in freehold;

appointed day means day fixed under section 2(1);

approved form means form for the time being approved under section 278;

authorised land officer means a person appointed under section 30 to be an authorised land officer;

Board means the Board established by section 94;

carbon covenant and ***carbon right*** have the same respective meanings as they have in the *Carbon Rights Act 2003*;

caveat means caveat lodged under section 20 or 21, as the case requires;

certificate of Crown land title means certificate of Crown land title (being a certificate of the radical title of the Crown) referred to in section 29 and showing the interests, dealings or caveats granted, entered in to or lodged in respect of a parcel of Crown land, and, except in that section, includes any subsidiary certificate of Crown land title —

(a) created in relation to part of that parcel; and

(b) referred to in that certificate of Crown land title; and

(c) showing the particular interests, dealings or caveats granted, entered into or lodged in respect of that part;

certificate of title has the same meaning as it has in the TLA;

class A reserve means reserve classified as a class A reserve under section 42;

Commissioner has the meaning given in the *Soil and Land Conservation Act 1945* section 4;

Commissioner of Main Roads means Commissioner of Main Roads holding office under the *Main Roads Act 1930*;

condition includes limitation, restriction and, when used in the sense of a stipulation, term;

condition of land, in relation to land under a pastoral lease or a diversification lease, includes the condition of the soil comprising the land and the condition of the vegetation on the land;

covenant means covenant referred to in section 15;

Crown land, subject to subsections (2), (3), (4) and (5), means all land, except for alienated land;

Crown lease has the same meaning as it has in the TLA;

DBNGP corridor has the meaning given in the *Dampier to Bunbury Pipeline Act 1997* section 27(1);

dealing, when used as a noun, means —

(a) document that when registered creates, effects, cancels or alters interests in, or status orders in respect of, Crown land; or

(b) order;

Department means department principally assisting the Minister in the administration of this Act;

diversification lease has the meaning given in section 92B(1);

diversification lessee means the holder of a diversification lease;

external Territory has the same meaning as it has in section 17 of the *Acts Interpretation Act 1901* of the Commonwealth;

high water mark, in relation to tidal waters, means ordinary high water mark at spring tides;

instrument, except in relation to a delegation to, or the appointment of, a person, has the same meaning as it has in the TLA;

interest, in relation to Crown land, means, except in Parts 9 and 10, charge, Crown lease, easement, lease, mortgage, profit à prendre or other interest, including such interests as are lawfully granted or entered into by a management body, and their counterparts under the repealed Act, but does not include —

(a) care, control and management of a reserve, mall reserve or road; or

(b) caveat; or

(c) licence; or

(d) mining, petroleum or geothermal energy right;

inundated land means alienated land that, through the excavation of that land or other land, has become inundated by tidal waters;

land means —

(a) all land within the limits of the State; and

(b) all marine and other waters within the limits of the State; and

(c) all coastal waters of the State as defined by section 3(1) of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth; and

(d) the sea-bed ~~and subsoil~~ beneath, and all islands and structures within, the waters referred to in paragraphs (b) and (c); and

(e) the airspace above, and subsoil beneath, anything referred to in paragraphs (a) to (d);

land administration expertise includes expertise and services in —

(a) the compilation, storage and use of land information; and

(b) land surveying; and

(c) land mapping; and

(d) land registration;

land district means land district constituted under section 26;

lease means lease of Crown land granted under this Act or under an order made under section 46(3) or 59(5)(b);

leasehold scheme has the meaning given in the *Strata Titles Act 1985* section 3(1);

licence means licence granted under section 91(1);

~~***location*** or ***lot*** means parcel of Crown land which is shown on a plan of survey or sketch plan approved by an authorised land officer;~~

location or ***lot*** has the meaning given in section 3A(1);

mall reserve means land reserved under section 59(1) as read with section 59(4)(a)(i);

managed reserve means reserve the care, control and management of which are placed under section 46 or 59;

management body means person or persons with whom or which the care, control and management of a reserve or mall reserve are placed under section 46(1) or 59(4);

management order means order by which the care, control and management of a reserve are placed under section 46(1) or 59(4);

management plan has the meaning given in section 108A(2);

mining, petroleum or geothermal energy right means —

(a) mining tenement within the meaning of the *Mining Act 1978*; or

(b) drilling reservation, lease, licence, permit, pipeline licence, special prospecting authority, access authority or other right under the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Pipelines Act 1969* or the *Petroleum (Submerged Lands) Act 1982*;

Minister means Minister in ~~his or her~~the Minister's capacity as the body corporate continued under section 7(1);

order means order made by the Minister under this Act in an approved form;

pastoral lease means lease which is a pastoral lease of Crown land granted under section 101 or continued under section 143;

pastoral lessee means holder of a pastoral lease;

Planning Commission means Western Australian Planning Commission established under the *Planning and Development Act 2005*;

positive covenant, in relation to land, means positive covenant complying with any relevant scheme and registrable under section 15, or covenant which complies with any relevant scheme and which imposes obligations —

(a) concerning the matters referred to in section 15(4)(a) to (e); or

(b) requiring the provision of public utility services or other services on or to the land or other land in its vicinity; or

(c) requiring the maintenance, repair or insurance of any structure or work on the land,

or imposes any condition with respect to the performance of or failure to perform any such obligation;

private road means alley, court, lane, road, street, thoroughfare or yard on alienated land, or a right of way created under section 167A(1) of the TLA, which —

(a) is not dedicated, whether under a written law or at common law, to use as such by the public; and

(b) is shown on a plan or diagram deposited or in an instrument lodged with the Registrar,

and which —

(c) forms a common access to land, or premises, separately occupied; or

(d) once formed or was part of a common access to land, or premises, separately occupied, but no longer does so; or

(e) is accessible from an alley, court, lane, road, street, thoroughfare, yard or public place that is dedicated, whether under a written law or at common law, to use as such by the public; or

(f) once was, but is no longer, accessible from an alley, court, lane, road, street, thoroughfare, yard or public place that was dedicated, whether under a written law or at common law, to use as such by the public;

profit à prendre means profit à prendre granted under section 91(1);

public access route means public access route declared under section 64(1);

public service officer has the same meaning as it has in the *Public Sector Management Act 1994*;

public utility services means drainage, electricity, gas, sewerage, telephone or water services or such other services as are prescribed for the purposes of this definition;

public work has the meaning given in the *Public Works Act 1902* section 2;

qualified certificate of Crown land title means qualified certificate of Crown land title referred to in section 29 or clause 44(2) of Schedule 2 and showing the interests, dealings or caveats granted, entered into or lodged in respect of a parcel of Crown land, and, except in that section, includes any subsidiary certificate of Crown land title —

(a) created in relation to part of that parcel; and

(b) referred to in that qualified certificate of Crown land title; and

(c) showing the particular interests, dealings or caveats granted, entered into or lodged in respect of that part;

recorded means recorded under Part IIIB of the TLA;

Register has the same meaning as it has in the TLA;

registered means registered under Part IIIB of the TLA;

Registrar or ***Registrar of Titles*** means Registrar of Titles referred to in section 7 of the TLA;

remuneration has the same meaning as it has in the *Salaries and Allowances Act 1975*;

repealed Act means *Land Act 1933*;

reservation means order retaining in the radical title of the Crown any right or interest in land as a condition of —

(a) a conveyance or transfer of Crown land in fee simple; or

(b) the grant or entering into of an interest in Crown land;

reserve means Crown land for the time being reserved under section 41;

road means~~, subject to section 54,~~ land dedicated at common law or reserved, declared or otherwise dedicated under an Act as an alley, bridge, court, lane, road, street, thoroughfare or yard for the passage of pedestrians or vehicles or both;

scheme has the same meaning as it has in the *Environmental Protection Act 1986*;

soil conservation notice means a soil conservation notice issued under the *Soil and Land Conservation Act 1945*;

State instrumentality —

(a) includes ~~organizations within the meaning of~~an organisation as defined in the *Public Sector Management Act 1994* section 3(1) and any other ~~bodies~~body corporate established under a written ~~laws~~law; but

(b) does not include a local government or a regional local government;

status order means order other than an order that creates an interest;

stock means birds, crustaceans, fish, mammals or reptiles or other animals of any kind whatsoever which are farmed, kept or managed;

subsidiary certificate of Crown land title means subsidiary certificate of Crown land title referred to in section 29;

TLA means *Transfer of Land Act 1893*;

townsite means townsite referred to in section 26(1);

transitional period means period of 5 years beginning on the appointed day;

unallocated Crown land means Crown land —

(a) in which no interest is known to exist, but in which native title within the meaning of the *Native Title Act 1993* of the Commonwealth may or may not exist; and

(b) which is not reserved, declared or otherwise dedicated under this Act or any other written law;

unmanaged reserve means reserve the care, control and management of which are not placed with a management body.

(2) All land below high water mark, including the beds and banks of tidal waters, is Crown land unless that land is inundated land or other alienated land.

(3) When tidal waters form the boundary of a parcel of land or a person holds the freehold ~~of~~in parcels of land adjoining tidal waters —

(a) the land below high water mark (except for land which was alienated land immediately before the appointed day) is Crown land; and

(b) if the line of the high water mark shifts over time by gradual and imperceptible degrees, the boundaries of the parcel or parcels of land shift with the high water mark.

(4) No act to occupy, use, build or carry out works or remove material, with or without lawful authority, is capable of causing land below high water mark to cease to be Crown land.

(5) Land that becomes raised above high water mark, whether gradually or imperceptibly or otherwise, because of the building or carrying out of works, is Crown land.

(6) A reference in this Act to the sale of Crown land is, unless the contrary intention appears, to be construed as a reference to the transfer of the Crown land in fee simple for consideration.

(7) A reference in this Act to the freehold in any land is a reference to the fee simple, whether absolute, conditional or otherwise, of that land.

[Section 3 amended: No. 59 of 2000 s. 4; No. 56 of 2003 s. 4; No. 38 of 2005 s. 6; No. 28 of 2006 s. 375; No. 60 of 2006 s. 139; No. 35 of 2007 s.~~-~~ 98(2) and (3); No. 30 of 2018 s. 145; No. 4 of 2023 s. 4 and 92.]

3A. Location or lot

(1) A ***location*** or ***lot*** is a parcel of Crown land that is shown on a plan of survey or sketch plan approved by an authorised land officer.

(2) A plan of survey or sketch plan may specify that a location or lot shown on it has —

(a) a two-dimensional configuration consisting of —

(i) length; and

(ii) width;

or

(b) a three-dimensional configuration consisting of —

(i) length; and

(ii) width; and

(iii) height or depth or both.

[Section 3A inserted: No. 4 of 2023 s. 5.]

4. Crown bound

This Act binds the Crown.

5. Rights to minerals, petroleum, geothermal energy etc., application of Act to

(1) This Act does not —

(a) apply to the registration of rights over Crown land in respect of minerals, petroleum, geothermal energy or geothermal energy resources; or

(b) prevent or otherwise affect the system of registration under other Acts of mining, petroleum or geothermal energy rights in respect of Crown land.

(2) In subsection (1) —

geothermal energy and ***geothermal energy resources*** have the same meanings as they have in the *Petroleum and Geothermal Energy Resources Act 1967*.

[Section 5 amended: No. 35 of 2007 s. 98(4).]

5A. Position on Earth, determining

(1) If for the purposes of this Act it is necessary to determine the position on the surface of the Earth of a point, line or area, that position is to be determined by reference to the prescribed Australian datum.

(2) Regulations that prescribe a datum for the purposes referred to in subsection (1), or amend that datum or prescribe another datum to replace that datum, may make any transitional or savings provisions that are necessary or convenient to be made.

(3) Regulations referred to in subsection (2) may modify or otherwise affect the operation of this Act.

[Section 5A inserted: No. 54 of 2000 s. 4.]

6. Divisions of State (Sch. 1)

For the purposes of this Act, the State is divided into the Divisions described in Schedule 1.

*[**6A.** Has not come into operation [1].]*

6B. Certain rights of way vested in local governments, status of etc.

To avoid doubt, it is declared that if —

(a) land was or is taken or resumed and vested in a local government for the purpose of a right of way or a right of way and recreation, and not a road; and

(b) the land comprising the right of way or right of way and recreation has not been or is not dedicated as a road under a written law,

the land —

(c) is and since it was vested in the local government has remained a right of way; and

(d) the common law relating to the creation of a public right of way by way of dedication and acceptance has never applied and does not apply to the land so as to dedicate the land as a public right of way.

[Section 6B inserted: No. 59 of 2000 s. 5.]

Part 2 — General administration

Division 1 — General role of Minister

7. Minister for Lands (body corporate), status of etc.

(1) The body corporate established under the repealed Act under the name of the Minister for Lands is continued as a body corporate under this Act under that name and consists of the Minister to whom the administration of this Act is from time to time committed by the Governor.

(2) The Minister has perpetual succession and a common seal.

(3) Proceedings may be taken by or against the Minister in ~~his or her~~the Minister's corporate name.

(4) The Minister is an agent of the Crown in right of the State and enjoys the status, immunities and privileges of the Crown.

[Section 7 amended: No. 4 of 2023 s. 92.]

8. International Program, powers as to; International Program Trust Account

(1) In this section —

Account means the International Program Trust Account established under subsection (3);

Program means the International Program established to initiate and advance the provision and sale to the Commonwealth or an external Territory, or to any instrumentality of either, or to any country outside Australia, of land administration expertise.

(2) The Minister is to carry out the Program and may for that purpose —

(a) invite persons in the private sector within Australia or elsewhere to participate in the establishment, development and completion of international projects

for the provision and sale to the Commonwealth or an external Territory, or to an instrumentality of either, or to any country outside Australia, of land administration expertise, and to negotiate and conclude agreements, including joint venture agreements, with those persons for the purpose of that participation; and

(b) raise such fees and charges in respect of that provision and sale, and under those agreements, as the Minister considers appropriate.

(3) The Minister may, with the prior approval of the Treasurer, establish under section 16 of the *Financial Management Act 2006* an agency special purpose account called the International Program Trust Account for the purposes of the Program.

(4) There are to be placed to the credit of the Account —

(a) moneys generated by the carrying out of the Program, including fees and charges raised under subsection (2)(b); and

(b) moneys appropriated by Parliament; and

(c) any other moneys lawfully received by, made available to or payable to the Minister in respect of the Program.

(5) The funds standing to the credit of the Account are to be applied in payment of —

(a) expenditure incurred by the Minister in the carrying out of the Program; and

(b) any other expenditure lawfully incurred by the Minister in respect of the Program.

(6) The Account is to be operated solely for the purposes of the Program and is to be administered by the Minister.

(7) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial

administration, audit and reporting of departments apply to and in relation to the Account.

(8) The administration of the Account is for the purposes of section 52 of the *Financial Management Act 2006* to be regarded as a service under the control of the department of the Public Service principally assisting in the administration of the Program.

[Section 8 amended: No. 28 of 2006 s. 376; No. 77 of 2006 Sch. 1 cl. 93(1) ( )-(3).]

9. Delegation by Minister

(1) Subject to subsections (2) and (3) and to Part 9 and section 273, the Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her delegate to —

(a) a public service officer of the Department, being a public service officer named; or

(b) a person for the time being holding an office in the Department, being an office specified; or

(c) a prescribed person, or a person belonging to a class of prescribed persons, specified,

in the instrument of delegation, any of his or her powers (other than this power of delegation) or duties under this Act.

(2) The Minister may, in accordance with the regulations, delegate under subsection (1) a power conferred or duty imposed by this Act to convey or transfer the fee simple in Crown land.

(3) When the Minister delegates a power or duty under subsection (1), that delegation is to be made by instrument published in the *Gazette*.

(4) A power or duty delegated under subsection (1) must, if exercised or performed by the delegate, be exercised or performed in accordance with the instrument of delegation.

(5) Nothing in this section prevents or limits the application of sections 58 and 59 of the *Interpretation Act 1984* to a delegation made under subsection (1).

10. General powers of Minister in relation to land

(1) The Minister may, in the name and on behalf of the State —

(a) exercise powers and perform duties in relation to land in accordance with this Act; and

(b) provide land administration expertise to the private and public sectors within Australia and elsewhere, and raise such fees and charges in respect of that provision as the Minister considers appropriate.

(2) The Minister may, when exercising powers or performing duties in relation to land under subsection (1)(a), require the land to be used for such purposes and subject to such conditions, covenants, encumbrances or reservations as are specified in the relevant order or other instrument.

(3) ~~The~~Subject to this Act, the Minister may exercise powers or perform duties in relation to land under subsection (1)(a) despite the existence of interests in, or caveats in respect of, the land if the Minister does so —

(a) without adversely affecting any such interest or caveat; or

(b) with the consent of the holder of any such interest or of the relevant caveator,

and those interests or caveats continue to apply to the land despite any such exercise or performance.

(4) When a consent referred to in subsection (3)(b) is given, the Minister may in accordance with that consent by exercising a

power conferred on ~~him or her~~the Minister by another provision of this Act extinguish the interest or caveat in respect of which that consent was given.

(5) Subject to this Act and to section 60(2)(b)(i) of the *Contaminated Sites Act 2003*, any proceeds received by the Minister from exercising powers or performing duties in relation to land, or providing land administration expertise and services, under subsection (1) are —

(a) for the purposes of the *Financial Management Act 2006*, to be taken to be moneys lawfully received by the Department; and

(b) subject to section 23 of that Act, to be credited to the Consolidated Account.

[Section 10 amended: No. 60 of 2003 s. 100; No. 74 of 2003 s. 72(2); No. 77 of 2006 s. 4 and Sch. 1 cl. 93(4~~).]~~); No. 4 of 2023 s. 7 and 92.]

11. Minister may acquire land in the public interest

(1) Subject to subsection (2), the Minister may, in the name and on behalf of the State, acquire an estate, interest or other right in or to land in the public interest from any person —

(a) by purchase; or

(b) by exchange, and may make or receive any payment that is necessary because of any difference in value between the pieces of land exchanged; or

(c) by accepting the surrender of land held in fee simple or a less estate or interest; or

(d) by taking it in the manner provided by Part 9; or

(e) by forfeiture to the State under section 35; or

(f) by acquiring it in any other manner provided for by this Act.

(2) The Minister may, in the name and on behalf of the State, acquire an estate, interest or other right in or to land in the public interest from the Commonwealth, another State, a Territory or another country —

(a) by purchase; or

(b) by exchange, and may make or receive any payment that is necessary because of any difference in value between the pieces of land exchanged; or

(c) by accepting the surrender of land held in fee simple or a less estate or interest.

(3) The Minister must, after consulting the Valuer-General, determine the value of any estate, interest or other right in or to land —

(a) to be purchased under this section; or

(b) to be acquired by exchange under this section, and the value of the estate, interest or other right in or to land to be transferred in exchange for the estate, interest or other right to be so acquired.

11A. Minister may hold and deal with alienated land

(1) The Minister may, in the name and on behalf of the State, hold the freehold in land.

(2) The Minister may, in the name and on behalf of the State, deal with and dispose of land held in freehold by the Crown, the State or the Minister.

(3) Without limiting subsection (2), the Minister may —

(a) undertake, plan, provide for, promote or coordinate the subdivision, amalgamation, improvement, development, alteration or management of land referred to in that subsection; and

(b) carry out any investigation, survey, exploration or feasibility study on, or in relation to, that land.

[Section 11A inserted: No. 4 of 2023 s. 8.]

11B. Powers of Minister in relation to administration and management of land

(1) The Minister may do all things necessary or convenient to be done for or in connection with the administration and management of Crown land and land referred to in section 11A(2).

(2) Without limiting subsection (1), the Minister may enter into a contract or arrangement with any person or body in respect of the administration or management of land referred to in that subsection.

[Section 11B inserted: No. 4 of 2023 s. 8.]

12. Powers and duties of Minister restricted in relation to managed reserves and mall reserves

(1) The Minister must not exercise a power ~~(other than a power conferred by section 50(1) or (2))~~ or perform a duty under section 10(1) in respect of the care, control or management of Crown land in a managed reserve or mall reserve without the consent of the relevant management body.

(2) Subsection (1) does not apply to —

(a) the exercise of a power conferred by section 42(3), 43(1)(a) or (c), 45(2), 50(1) or (2) or 51(2); or

(b) the performance of a duty imposed by section 42(4) or 45(4); or

(c) the exercise of a power, or the performance of a duty, that is necessary as a consequence of the exercise of a power referred to in paragraph (a); or

(d) the exercise of a power conferred by, or the performance of a duty imposed by, Part 9.

[Section 12 amended: No. 4 of 2023 s. 9.]

13. Ministerial orders, registration of etc.

(1) The Minister must, when ~~he or she~~the Minister makes an order, lodge the order with the Registrar for registration.

(2) An order is not subsidiary legislation within the meaning of the *Interpretation Act 1984*.

(3) If a minor error or omission has occurred in respect of an order, the Minister may, if to do so will not prejudice any person affected by the order, by subsequent order amend the order.

(4) An order amended under subsection (3) is to be treated as having been made in its amended form.

(5) An order becomes effective on registration.

(6) An order revoked or replaced under section 165(4) ceases to have effect from the day the order revoking it or replacing it is registered.

(7) An order amended under section 165(4) is to be treated as having been made in its amended form from the day the order amending it is registered.

[Section 13 amended: No. 59 of 2000 s. ~~6~~6; No. 4 of 2023 s. 92.]

14. Minister to consult local governments before exercising certain powers in relation to Crown land

(1) Before exercising in relation to Crown land any power conferred by this Act~~,~~ (other than Part 5), the Minister must, unless it is impracticable to do so, consult the local government ~~within~~of the district ~~of~~in which the Crown land is situated concerning ~~that~~the proposed exercise of power.

(2) For the purposes of subsection (1), the Minister consults the local government if the Minister —

(a) gives written notice of the proposed exercise of power to the local government; and

(b) in the notice invites the local government to provide comments on the proposed exercise of power within 42 days after the date of the notice; and

(c) considers any comments received within the 42-day period referred to in paragraph (b) or any longer period allowed under subsection (3).

(3) The Minister may, on application by the local government, allow a longer period for comments in response to a notice given under subsection (2).

[Section 14 inserted: No. 4 of 2023 s. 10.]

Division 2 — Covenants and conditions and their enforcement

15. Covenants as to use, subdivision etc. of certain land

(1) This section applies to land which is —

(a) Crown land; or

(b) alienated land that is the subject of an agreement relating to the use of the alienated land and that is entered into between —

(i) the Minister; and

(ii) the person who is the holder of the freehold in the alienated land,

before the alienated land was transferred by the Minister in fee simple to that holder.

(2) In this section —

agreement land means alienated land referred to in subsection (1)(b);

registered, in relation to —

(a) Crown land, means registered under Part IIIB of the TLA; or

(b) agreement land, means registered under the TLA otherwise than under Part IIIB of the TLA,

and ***registrable*** has a corresponding meaning.

(3) Subject to subsection (5), a covenant described in subsection (4) in favour of the Minister as covenantee —

(a) may be registered —

(i) if that covenant relates to Crown land, by order against the relevant certificate of Crown land title or qualified certificate of Crown land title; or

(ii) if that covenant relates to agreement land, by instrument against the relevant certificate of title,

subject to that covenant; and

(b) runs with that Crown land or agreement land, as the case requires; and

(c) is enforceable against the covenantor and ~~his or her~~the covenantor's successors in title even if that covenant is not annexed to land in which the Minister has an estate or interest.

(4) A covenant registrable under subsection (3) may be a positive covenant or restrictive covenant and may, without limiting the generality of this subsection, include one or more of the following —

(a) provision in respect of the use of land subject to that covenant, the use of a building on or to be erected on that land or the payment of the purchase price of that land;

(b) the requirement that land —

(i) is to be built on in accordance with that covenant; or

(ii) is not to be built on except in accordance with that covenant; or

(iii) is not to be built on;

(c) the requirement that land —

(i) is not to be subdivided except in accordance with that covenant; or

(ii) is not to be subdivided;

(d) the requirement that parcels of that land designated in that covenant and registered under one or more titles are not to be sold or otherwise transferred separately;

(e) provision in respect of the conditions subject to which the fee simple of, or an interest in, Crown land is to be transferred, granted or entered into.

(5) The Minister must, before a positive covenant referred to in subsection (4) is registered in respect of —

(a) Crown land the subject of an interest, status order or caveat, obtain the consent of the holder of the interest, of the management body or other person affected by the status order or of the caveator; or

(b) agreement land, obtain the consent of the holder of the freehold in the agreement land,

to that registration.

(6) A covenant described in subsection (7) —

(a) may impose an obligation on the covenantor to be performed to the satisfaction of —

(i) the Minister, a State instrumentality or a local government; or

(ii) such other person as is prescribed,

as covenantee; and

(b) may be registered —

(i) if that covenant relates to Crown land, by order against the relevant certificate of Crown land title or qualified certificate of Crown land title; or

(ii) if that covenant relates to agreement land, by instrument against the relevant certificate of title,

subject to that covenant; and

(c) runs with that Crown land or agreement land, as the case requires; and

(d) is enforceable against the covenantor and ~~his or her~~the covenantor's successors in title even if that covenant is not annexed to land in which the covenantee has an estate or interest.

(7) A covenant registrable under subsection (6) may be a positive covenant or restrictive covenant and may include one or more of the following —

(a) any provision or requirement referred to in subsection (4)(a), (b), (c), (d) or (e);

(b) the requirement that land or a specified amenity in relation to it be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state in accordance with, and to the extent provided in, that covenant.

(8) For the purposes of subsection (7) —

amenity includes natural, historical, heritage, cultural, scientific, architectural, environmental, wildlife or plant life value relating to the land that is subject to the relevant covenant.

(9) A covenant registered under this section —

(a) indemnifies the covenantee against any matter agreed to by the covenantor and covenantee and provides for the due performance of the obligations under that covenant by the holders of interests, or the holder of the freehold, in the relevant land; and

(b) constitutes a charge on the relevant land.

(10) Section 110 of the TLA does not apply to a charge referred to in subsection (9)(b).

(11) If an order or other instrument contains a covenant registrable under this section, that covenant, while registered, is binding on the covenantor and ~~his or her~~the covenantor's successors in title.

(12) A person who enters into a covenant under this section is not liable for a breach of the covenant which occurs after that person ceases to hold —

(a) an interest in the relevant Crown land; or

(b) the freehold in the relevant agreement land,

as the case requires.

(13) A covenant referred to in subsection (9) may be —

(a) modified by agreement between the covenantor or ~~his or her~~the covenantor's successor in title and the covenantee; or

(b) discharged by the covenantee.

(14) In relation to Crown land, the Minister may be the covenantor of a covenant registered under subsection (3) or (6).

(15) If a covenant is registered under subsection (3) or (6) against Crown land by an instrument against the relevant certificate of Crown land title or qualified certificate of Crown land title, the covenant is by operation of this subsection transferred to, and applies to, the fee simple when the Crown land is transferred in fee simple in all respects as if the fee simple had been referred to in the covenant.

[Section 15 amended: No. 59 of 2000 s. ~~7~~7; No. 4 of 2023 s. 92.]

16. Land held on conditional fee simple (s. 75(1)), memorial of charge to secure performance of conditions

(1) If the Minister transfers Crown land in fee simple under section 75(1) subject to the condition that the due performance of other conditions by the holder of the freehold in the relevant land is to be secured by a charge on that land registered under

this section, the Minister may lodge a memorial in an approved form with the Registrar.

(2) When the Registrar has registered a memorial and noted the Register accordingly, the due performance of conditions referred to in subsection (1) is a charge on the subject land for the benefit of the Minister.

(2A) If the charge secures the due performance of conditions concerning a specified use under section 75(1) and those conditions are varied under that section, the charge is to be taken to secure the performance of the conditions as so varied.

(3) If a registered memorial referred to in subsection (2) —

(a) states that no dealings or other instruments are to be registered in respect of the subject land while that memorial remains registered under this section, that memorial has effect accordingly; or

(b) does not so state, that memorial is merely notice of its contents to those concerned with the subject land.

(4) If any default is made in respect of the performance referred to in subsection (2) while the relevant memorial remains registered, the Minister has the same powers of sale over the subject land as are given by the TLA to a mortgagee under a mortgage in respect of which default has been made in the payment of principal.

(5) If the Minister determines that a charge in respect of which a memorial referred to in subsection (2) is registered is no longer required, the Minister may request the Registrar to cancel that memorial.

(6) On receiving a request made under subsection (5), the Registrar must cancel the relevant memorial and by doing so remove the charge from the subject land.

(7) In this section —

subject land means land referred to in subsection (1).

[Section 16 amended: No. 30 of 2018 s. 146.]

Division 3 — General

17. Hazards etc. affecting land, warnings as to on certificates of title etc.

(1) When the Minister wishes the certificate of title of land the fee simple of which has been transferred under this Act to be endorsed with a statement warning of hazards or other factors affecting, or likely to affect, the use or enjoyment of that land, the Minister may, with the consent of the holder of that fee simple, lodge with the Registrar a memorial in an approved form containing that statement.

(2) When the Minister wishes the certificate of Crown land title of a parcel of Crown land an interest in which has been or is to be granted or entered into under this Act to be endorsed with a statement warning of hazards or other factors affecting, or likely to affect, the use or enjoyment of that parcel, the Minister may lodge with the Registrar a memorial in an approved form containing that statement.

(3) On the lodging of a memorial under subsection (1) or (2), the Registrar must —

(a) endorse on the relevant certificate of title or certificate of Crown land title; and

(b) note on the Register,

a memorandum of the memorial.

(4) The Minister may, at any time after the lodging of a memorial under subsection (1) or (2), request the Registrar to remove —

(a) the relevant endorsement from the certificate of title or certificate of Crown land title; and

(b) the relevant note from the Register,

and the Registrar must comply with that request.

18. Crown land transactions that need Minister's approval

(1) A person must not without authorisation under subsection (7) assign, sell, transfer or otherwise deal with interests in Crown land or create or grant an interest in Crown land.

(2) A person must not without authorisation under subsection (7) —

(a) grant a lease or licence under this Act, or a licence under the *Local Government Act 1995*, in respect of Crown land in a managed reserve; or

(b) being the holder of such a lease or licence, grant a sublease or sublicence in respect of the whole or any part of that Crown land.

(3) A person must not without authorisation under subsection (7) mortgage a lease of Crown land.

(4) A lessee of Crown land must not without authorisation under subsection (7) sell, transfer or otherwise dispose of the lease in whole or in part.

(5) The Minister may, before giving approval under this section, in writing require —

(a) an applicant for that approval to furnish the Minister with such information concerning the transaction for which that approval is sought as the Minister specifies in that requirement; and

(b) information furnished in compliance with a requirement under paragraph (a) to be verified by statutory declaration.

(6) An act done in contravention of subsection (1), (2), (3) or (4) is void.

(7) A person or lessee may make a transaction under subsection (1), (2), (3) or (4) —

(a) with the prior approval in writing of the Minister; or

(b) if the transaction is made in circumstances, and in accordance with any condition, prescribed for the purposes of this paragraph.

(8) This section does not apply to a transaction relating to an interest in Crown land if —

(a) that land is set aside under, dedicated or vested for the purposes of an Act other than this Act, and the transaction is authorised under that Act; or

(b) that interest may be created, granted, transferred or otherwise dealt with under an Act other than —

(i) this Act; or

(ii) a prescribed Act;

or

(c) an agreement, ratified or approved by another Act, has the effect that consent to the transaction was not required under section 143 of the repealed Act; or

(d) the transaction is a lease, sublease or licence and the approval of the Minister is not required under section 46(3b).

[Section 18 amended: No. 59 of 2000 s. 8(1)-(5)[2].]

18A. Carbon rights etc. affecting Crown land, Minister's powers as to

The Minister may —

(a) apply for the State to be registered as the proprietor of a carbon right in respect of Crown land; or

(b) enter into a carbon covenant —

(i) that benefits a carbon right in respect of Crown land; or

(ii) that burdens Crown land;

or

(c) deal with —

(i) a carbon right in respect of Crown land; or

(ii) a carbon covenant referred to in paragraph (b)(i) or (ii).

[Section 18A inserted: No. 56 of 2003 s. 5.]

19. Dealings etc. as to Crown land not effective until registered etc.

Subject to section 68 of the TLA, a dealing or caveat in respect of Crown land created or lodged under this Act or the TLA does not become effective until that dealing is registered or that caveat is recorded, as the case requires.

19A. Encumbrances on fee simple in Crown land, application of TLA to

To avoid doubt, if the fee simple in Crown land is transferred under this Act subject to encumbrances, it is declared that sections 81Q, 81R, and 81RA (in respect of a transfer effected on or after the coming into operation of the *Land Administration Act 1997*) of the TLA apply to that land whether or not there is a specific provision in the TLA or this Act that provides for encumbrances to be transferred to, and applied to, the fee simple when transferred in all respects as if the fee simple had been referred to in the encumbrance.

[Section 19A inserted: No. 59 of 2000 s. 9.]

20. Certain interests in Crown land, caveats as to

(1) Subject to subsection (2), a person claiming an interest in land the subject of a certificate of Crown land title or a qualified certificate of Crown land title may lodge a caveat with the Registrar under Part V of the TLA.

(2) A caveat can only be lodged under subsection (1) in respect of —

(a) a registered interest; or

(b) an interest approved by the Minister under section 18, but not registered; or

(c) an interest referred to in section 18(8).

[Section 20 amended: No. 59 of 2000 s. 10.]

21. Caveat for State or person under disability, Minister may lodge

(1) Part V of the TLA does not apply to or in relation to this section.

(2) The Minister may lodge with the Registrar, and direct the Registrar to record against the relevant certificate of Crown land title, a caveat on behalf of —

(a) the State; or

(b) any person who is a minor, has a mental disability as defined in the *Guardianship and Administration Act 1990* section 3(1), is absent from the State or is otherwise under a disability,

to forbid absolutely the registration of —

(c) any transfer in fee simple of, or any disposal of an interest in, or other dealing with, Crown land in which the State claims, or that person appears to have a claim to, an interest; or

(d) any grant of or entry into, or other dealing with, an interest in Crown land —

(i) in any case in which it appears that an error has been made by misdescription or otherwise in any order or other instrument; or

(ii) for the purpose of preventing any fraud or improper dealing.

(3) The Minister may —

(a) lodge with the Registrar a caveat on behalf of the State or a person to protect an interest in Crown land and direct the Registrar to endorse a memorandum of the caveat on the Register accordingly; or

(b) direct the Registrar to remove, wholly or in part, a caveat lodged under this subsection and amend or delete the relevant memorandum accordingly.

(4) The Registrar must comply with a direction given under subsection (2) or (3).

[Section 21 amended: No. 25 of 2014 s. 71.]

22. Interest or caveat to continue despite change in status of Crown land ceasing to be reserved etc., interests in etc. continue

(1) When anyIn this section —

reserve excision order means an order made under section 42(3), 43(1)(a) or (c), 45(2) or 51(1) or (2) that excises an area from a reserve.

(2) An interest or caveat to which Crown land is subject to an interest or caveat andcontinues if the Crown land —

(a) is, or ceases to be, reserved under section 41; or

(b) is, or ceases to be—

(a) reserved under Part 4; or

(b) , dedicated, reserved, set apart or vested under another written law; or.

(c) subject to a management order,

(3) Despite subsection (2), if Crown land ceases to be reserved under section 41 as the result of a reserve excision order, an interest or caveat to which the Crown land is subject is

extinguished, on registration of the reserve excision order, unless —

(a) the interest or caveat only applies to the Crown land; and

(b) the reserve excision order specifies that the interest or caveat continues.

(~~2~~4) If a lease ~~is continued~~continues under ~~subsection (1),~~this section, the Minister may, with the consent of the lessee, vary the terms of the lease and must, if ~~he or she~~the Minister does so, lodge that variation with the Registrar.

(5) The continuation of an interest or caveat under this section is subject to the other provisions of this Act.

[Section 22 inserted: No. 4 of 2023 s. 11.]

23. ~~Subdivision etc.~~Adjustment of boundaries of Crown land ~~the subject of interests etc.~~for purposes of survey or resurvey

(1) If the Minister proposes to survey or resurvey the internal or external boundaries (or both) of~~, or to subdivide under section 27,~~ Crown land the subject of any interests or caveats, the Minister may, with or without the consent of the holders of the interests, or of the relevant caveators, by order ~~incorporating~~make any adjustment to those boundaries the Minister considers necessary, in accordance with a plan of survey or sketch plan specified in the order, without any obligation to make or ~~revised plan of survey or sketch plan make such adjustments to those boundaries as~~ pay compensation.

~~(a) the Minister considers necessary; and~~

~~(b) accord with any proposed plan of subdivision approved under the *Planning and Development Act 2005*,~~

~~without any obligation to make or pay compensation.~~

(2) On the ~~approval by~~ registration of an ~~authorised land officer of a plan of survey or sketch plan or revised plan of survey or sketch plan~~ order referred to in subsection (1~~) and the registration of the order with reference to that plan of survey or sketch plan or revised plan of survey or sketch plan,~~), the internal or external boundaries (or both) of the relevant Crown land are adjusted accordingly —

(a) despite the existence of any interests registered or caveats lodged in respect of that Crown land; and

(b) with or without the consent of the holders of those interests or of the relevant caveators.

(3) The Minister must ensure that an adjustment made under subsection (2) is made in conformity with sound planning and land management principles so as to cause as little detriment as possible to any interest or caveat affected by that adjustment.

(4) On the adjustment under subsection (2) of the internal or external boundaries (or both) of Crown land subject to interests or caveats, the interests or caveats apply to the relevant locations or lots within those boundaries and not to the Crown land referred to in the instruments which created those interests or caveats.

[Section 23 amended: No. 38 of 2005 s. ~~7~~7; No. 4 of 2023 s. 12.]

24. Minerals, petroleum and geothermal energy etc. are reserved to Crown

Minerals within the meaning of the *Mining Act 1978* and petroleum within the meaning of the *Petroleum and Geothermal Energy Resources Act 1967* or the *Petroleum (Submerged Lands) Act 1982* and geothermal energy resources and geothermal energy within the meaning of the *Petroleum and Geothermal Energy Resources Act 1967* in Crown land are reserved to the Crown and remain so reserved after the Crown land is transferred in fee simple under this Act.

[Section 24 amended: No. 35 of 2007 s. 98(5).]

25. Mortgage of interest in Crown land, effect of

Subject to sections 76 and 77, a mortgage of an interest in Crown land has the same effect in relation to that interest as a mortgage has under Division 3 of Part IV of the TLA in relation to land referred to in that Division.

26. Land districts and townsites, constitution etc. of

(1) In this section —

townsite —

(a) means townsite constituted under subsection (2); and

(b) except in subsection (2)(a), includes land referred to in clause 37 of Schedule 9.3 to the *Local Government Act 1995*.

(2) Subject to section 26A, the Minister may by order —

(a) constitute land districts and townsites; and

(b) define and redefine the boundaries of, name, rename and cancel the names of, and, subject to this section, abolish land districts and townsites; and

(c) name, rename and cancel the name of any topographical feature, road or reserve.

(3) An order made under subsection (2) may include such matters enabled to be effected under an order made under another provision of this Act as the Minister thinks fit.

[Section 26 amended: No. 38 of 2005 s. 8.]

26A. ~~New subdivisions, names~~Names of roads and areas in new subdivision

(1) If a person delivers a ~~diagram or~~ plan of survey or sketch plan of a subdivision of land approved by the Planning Commission to a local government, and the proposed subdivision includes the provision of a road for use by the public, that person must

also deliver to the local government the name proposed to be given to the road.

(2) The local government may require the person so subdividing the land —

(a) to propose a name for the proposed road or, if a name has already been proposed, to alter that name; and

(b) to propose a name for the area the subject of the proposed subdivision, or if a name has already been proposed, to alter that name.

(3) If the local government approves a name proposed under subsection (1) or (2), the local government is to forward the proposal to the Minister.

(4) The Minister may —

(a) approve the proposed name; or

(b) direct the local government to reconsider the proposed name, having regard to such matters as the Minister may mention in the direction; or

(c) refuse to approve the proposed name.

(5) A person must not —

(a) assign a name to the area or road unless the name is first approved by the Minister;

(b) alter or change a name that has been so assigned, whether initially or from time to time, to the area or road unless the Minister first approves of the alteration or change of that name.

Penalty~~: $1 000 and a daily penalty of $100.~~ for this subsection:

(a) a fine of $2 000;

(b) a daily penalty of a fine of $ 200 for each day or part of a day during which the offence continues.

[Section 26A inserted: No. 38 of 2005 s. ~~9~~9; amended: No. 4 of 2023 s. 13 and 91.]

27. ~~Crown land, subdivision~~Subdivision and development of Crown land

(1) The Minister may~~, subject to this section —~~ —

(a) subdivide, ~~in accordance with the whole or any part of a plan of survey or sketch plan, and~~ develop, or subdivide and develop, Crown land; and

(b) cause funds to be expended on~~:~~ —

(i) that subdivision, development, or subdivision and ~~on~~ development; and

(ii) marketing, planning, surveying and related activities for the purposes of ~~any such~~that subdivision, development, or subdivision and development.

(2) Without limiting the generality of subsection (1)(a), the Minister may for the purposes of that subsection —

(a) cause any parcel of Crown land to be surveyed into locations or lots; and

(b) decide on the shape and size of those locations or lots and on the width and direction of each road within that parcel.

(3) The Minister may, ~~with~~by order —

(a) for the ~~consent~~purposes of ~~each person having any interest or other right, or a power, in or over~~ subsection (1)(a), subdivide Crown land ~~affected by any proposed subdivision shown in~~ in accordance with the whole or any part of a plan of survey or sketch plan that shows a proposed subdivision of the land and is specified in the order; and

(b) dedicate as a road any Crown land delineated and shown on the plan of survey or sketch plan referred to in ~~subsection (1) to the extinguishment of that interest, right~~paragraph (a) as a new road or an extension or ~~power, by order to which that plan of survey or sketch~~

~~plan is annexed subdivide that land in accordance with the whole or any part of that plan~~widening of ~~survey or sketch plan~~a road.

~~(4) When a consent referred to in subsection (3) is given, the Minister may by exercising a power conferred on him or her by another provision of this Act extinguish the interest, right or power in respect of which that consent was given.~~

(4) Land subdivided under subsection (3)(a) or dedicated under subsection (3)(b) is subject to any encumbrances specified in the order.

[(5) deleted]

(6) For the purposes of this section, the boundaries of Crown land adjoining tidal waters or other waters are to be limited whenever practicable by straight lines as near to high water mark as an authorised land officer decides.

[Section 27 amended: No. 38 of 2005 s. ~~10~~10; No. 4 of 2023 s. 14.]

~~28. Subdivisions of Crown land, dedication etc. of roads in~~

~~(1) When the Minister causes a parcel of Crown land within the district of a local government to be surveyed into locations or lots under section 27 and the plan of that survey is approved by an authorised land officer, any land delineated and shown on that plan as a new road, or an extension or widening of a road, is, subject to subsection (2)~~

~~(a) by force of this subsection dedicated as a road; and~~

~~(b) placed under the care, control and management of the local government.~~

~~(2) To be dedicated under subsection (1), land must at the time of dedication be~~

~~(a) unallocated Crown land; and~~

~~(b) designated on the relevant plan of survey as having the purpose of a road.~~

[28. Deleted: No. 4 of 2023 s. 15.]

29. Certificates etc. of Crown land title, creation and registration of

(1) Subject to this section, the Minister may apply to the Registrar for the creation and registration of a certificate of Crown land title or qualified certificate of Crown land title in an approved form in relation to a parcel of Crown land or part of such a parcel, as the case requires, shown on —

(a) the relevant plan of survey or sketch plan referred to in section~~-~~ 27(~~1~~3)(a) on the registration of that plan of survey or sketch plan; or

(b) a plan of survey or sketch plan used by the department of the Public Service through which the repealed Act was administered.

(2) The Minister may apply to the Registrar for the creation and registration of a subsidiary certificate of Crown land title in an approved form in relation to one or more interests in a reserve or lease (the ***additional interests***) when the number of existing interests in the reserve or lease is such that it would be impracticable to record the additional interests on the certificate of Crown land title or qualified certificate of Crown land title created in respect of the reserve or lease.

(3) A subsidiary certificate of Crown land title referred to in subsection (2) must be cross-referenced to the relevant certificate of Crown land title or qualified certificate of Crown land title.

(4) An application made under subsection (2) is to be accompanied by a sketch plan of internal interests, that is to say, a sketch plan showing each interest to which the subsidiary certificate of

Crown land title is to relate and each area of Crown land the subject of such an interest.

(5) A certificate of Crown land title, a qualified certificate of Crown land title and a subsidiary certificate of Crown land title are to be created in the name of the State of Western Australia and to evidence interests, reserves or other dealings, or caveats, in respect of the parcel of Crown land or part of such a parcel, as the case requires, to which they relate.

(6) Subject to subsection (2), a certificate of Crown land title, qualified certificate of Crown land title or subsidiary certificate of Crown land title may be created and registered in respect of unsurveyed Crown land as a result of an application under subsection (1) or (2) if the certificate of Crown land title, qualified certificate of Crown land title or subsidiary certificate of Crown land title is endorsed with the words "Subject to survey".

[Section 29 amended: No. 4 of 2023 s. 16.]

30. Authorised land officers, appointing etc.

(1) The Minister may by notice published in the *Gazette* —

(a) appoint a person employed in or by a relevant public authority who is a licensed surveyor within the meaning of the *Licensed Surveyors Act 1909* to be an authorised land officer and to perform such functions as are conferred or imposed on an authorised land officer by this Act or any other Act; and

(b) exercise in relation to such an appointment any power conferred by section 52(1) of the *Interpretation Act 1984*.

(2) In this section —

relevant public authority means —

(a) a department of the Public Service; or

~~(b) a body, whether corporate or unincorporate, established for a public purpose under a written law.~~

(b) an organisation as defined in the *Public Sector Management Act 1994* section 3(1).

[Section 30 amended: No. 28 of 2006 s. 377; No. 4 of 2023 s. 17.]

31. Public service officer of Department, restrictions on as to acquiring Crown land

(1) Subject to subsection (2), a public service officer of the Department must not, without the permission of the Minister, acquire an interest in Crown land.

(2) Subsection (1) does not apply to an acquisition of an interest in Crown land if that acquisition is made by the relevant public service officer —

(a) through public auction; or

(b) on behalf of the Minister.

32. Plans of survey and sketch plans to be approved

A plan of survey or sketch plan produced for the purposes of this Act must be approved, in whole or in part, by an authorised land officer.

33. Approved plans of survey and sketch plans, evidentiary status of

A plan of survey or sketch plan approved under section 32 is evidence in any court or before any person acting judicially of the boundaries shown on that plan of survey or sketch plan.

34. Entry to Crown land by Minister, powers as to

(1) Subject to subsection (2), the Minister, or a person authorised in writing by the Minister for the purpose, may enter any Crown

land in order to make any examination, inspection or survey of that Crown land for the purposes of this Act.

(2) Nothing in subsection (1) empowers the Minister or a person referred to in that subsection to enter a dwelling house on Crown land without the prior agreement of the occupier of the dwelling house.

(3) This section does not apply to Crown land —

(a) which is dedicated, reserved, set apart or leased under another written law; and

(b) the care, control or management of which is placed with a State instrumentality.

35. Breach of condition or covenant applying to Crown or freehold land, Minister's powers in case of

(1) If in the opinion of the Minister there has been a breach of any condition or covenant subject to which —

(a) an interest in Crown land is held, the Minister must, if the Minister intends to cause the forfeiture of that interest under this section, give to the holder of that interest; or

(b) the freehold ~~of~~in any land transferred in fee simple under section 75(1) is held, the Minister must, if the Minister intends to cause the forfeiture of that freehold under this section, give to the holder of that freehold,

(the ***respondent***) notice of the nature of that breach and of that intention.

(2) A respondent may, within the period of 30 days after the ~~giving to him or her of~~respondent is given notice under subsection (1) or such longer period as the Minister in special circumstances allows, lodge an appeal against the proposed forfeiture with the Minister under Part 3.

(3) If no appeal is lodged within the period referred to in subsection (2) or an appeal is lodged within that period but subsequently lapses, is withdrawn or is dismissed, the Minister may by order cause the relevant interest or freehold to be forfeited.

(4) On the registration of an order made under subsection (3)~~—~~ in respect of an interest in Crown land, the interest is forfeited to the State.

~~(a) the interest or~~ (4A) On the registration of an order made under subsection (3) in respect of the freehold in land (other than land to which ~~that order relates~~ subsection (4B) applies) —

(a) the freehold is forfeited to the State; and ~~the relevant land —~~

(b) at the election of the Minister —

(i) the freehold in the land is held by the Minister, in the name of the State; or

(ii) the land becomes ~~unallocated~~ Crown land~~; or~~.

~~(ii) if a sublease, caveat or other interest continues to have effect under an exemption granted~~ (4B) On the registration of an order made under subsection (~~5)(a)(i), becomes or remains Crown~~3) in respect of the freehold in land~~; or~~

~~(iii) if it~~ that is ~~land referred to in subsection (1)(b)~~ subdivided by a leasehold scheme~~,~~ —

(a) the freehold is forfeited to the State; and

(b) the land remains ~~so~~ subdivided; and

(c) the freehold reversion in the land is held by the Minister, in the name of the State, until the termination of the leasehold scheme, when, at the ~~land becomes Crown land;~~election of the Minister —

~~and~~

(b (i) the freehold in the land is held by the Minister, in the name of the State; or

(ii) the land becomes Crown land.

(4C) On the registration of an order made under subsection (3) —

(a) any moneys paid to the Minister in respect of that the relevant interest or freehold cannot be recovered by the respondent; and

(c b) any improvements made by the respondent on the land to which that the relevant interest or freehold relates become the property of the Crown.

(5) Despite the forfeiture of an interest or freehold under this section —

(a) the Minister may —

(i) by order exempt from that forfeiture any existing sublease, caveat or other interest or caveat relating to the land the subject of the interest or freehold, and a sublease, caveat or other interest or caveat so exempted continues to have effect; and

(ii) cause any improvements made by the former holder of the interest or freehold to be valued by agreement with the former holder or, failing any such agreement, by arbitration under the *Commercial Arbitration Act- 2012* to enable the value of improvements, less any moneys owing to the Minister by that holder, to be paid to that former holder if the Minister thinks fit;

and

(b) the respondent remains liable to pay any moneys payable to the Minister in respect of the interest or freehold before the date of that forfeiture.

(6) A sublease or other interest which —

(a) continues to have effect under an exemption granted under subsection (5)(a)(i); and

(b) is not already registered,

must be registered against the parcel of ~~Crown~~ land concerned as soon as practicable after the granting of that exemption.

(7) Despite the terms of the exemption under subsection (5)(a)(i) under which a sublease or other interest continues to have effect, the Minister may, with the consent of the sublessee or interest holder, by order vary the terms of the sublease or other interest.

(8) The Minister may —

(a) charge the respondent interest at the same rate as the rate prescribed under section 8(1)(a) of the *Civil Judgments Enforcement Act 2004* at the date of the forfeiture under subsection (4), (4A)(a) or (4B)(a) of the relevant interest or freehold, compounded in respect of each completed period of 6 months during which any of the moneys concerned remain unpaid, on any moneys payable to the Minister in respect of that interest or freehold before the date of that forfeiture but remaining unpaid; and

(b) recover from the respondent as a debt due to the Minister by action in a court of competent jurisdiction the amount of any unpaid interest charged under this subsection.

(9) The acceptance or demand by the Minister of an amount less than the total amount of any unpaid moneys referred to in subsection (8)(a) does not constitute a waiver ~~by~~of the ~~Minister of his or her~~Minister's right —

(a) to receive payment of the balance of those unpaid moneys; or

(b) to enforce the observance of any condition or covenant subject to which the relevant interest or freehold was held before it was forfeited under this section.

(10) If the land the subject of an interest or freehold forfeited under this section is not required for any public purpose, that land may, unless it is subdivided by a leasehold scheme or any sublease, ~~caveat or~~ other interest ~~that~~or caveat continues to have effect under an exemption granted under subsection (5)(a)(i), be dealt with under this Act in the same way that any other alienated land or unallocated Crown land, as the case requires, may be dealt with.

(10A) If the freehold reversion in land forfeited under this section is held by the Minister, as referred to in subsection (~~4)(a)(iii~~4B)(c), then nothing in this Act, or any other law, affects the capacity of the Minister under the *Strata Titles Act 1985* to be, and to exercise all rights and functions as —

(a) the owner of a leasehold scheme; and

(b) if the Minister, as owner of a leasehold scheme, re-enters a lot in a leasehold scheme under the *Strata Titles Act 1985* — the owner of a lot in a leasehold scheme.

(11) If there are any improvements on land referred to in subsection (10), the Minister may ascertain the value of those improvements and add that value to the price payable for an interest in, or the freehold ~~of~~in, that land.

(12) An order —

(a) made under subsection (3) in respect of an interest in Crown land; and

(b) registered,

is equivalent to a re-entry and recovery of possession by or on behalf of the Crown within the meaning of any provision for re-entry expressed in, or implied by, the relevant lease or other instrument.

[Section~~-~~ 35 amended: No. 8 of 2009 s. 83(2); No. 23 of 2012 s. 45; No. 30 of 2018 s. 147; No. 4 of 2023 s. 18.]

36. Breach of condition or covenant applying to Crown or freehold land, Minister's powers exercisable with consent of interest holder

If in the opinion of the Minister there has been a breach of any condition or covenant subject to which —

(a) an interest in any Crown land the subject of a contract for sale; or

(b) the freehold in any land transferred in fee simple under section 75(1),

is held, the Minister may —

(c) without giving —

(i) the holder of that interest notice under section 35(1), by agreement with that holder terminate the contract for sale and arrange for that holder to remove any caveat registered against the relevant Crown land title; or

(ii) the holder of that freehold notice under section 35(1), by agreement with that holder arrange for the removal of any encumbrances to which that freehold is subject and the conveyance of that freehold to the State,

and

(d) if the Minister thinks fit in the case of a contract for sale referred to in paragraph (a), cause to be refunded to the purchaser the amount already paid towards the purchase price of the land, less an amount which represents 10% of that purchase price.

Part 3 — Appeals to Governor

37. Lodging an appeal with Minister, manner of

(1) A person to whom this subsection applies and who wishes to lodge an appeal with the Minister under this Part must do so by serving on the Minister notice in writing of the appeal setting out the grounds of the appeal.

(2) Subsection (1) applies to a person empowered to lodge an appeal under section 35(2), 133(2), 145(2), 190(10) or 272(1).

38. Minister's role on receipt of notice of appeal

On receiving notice of an appeal, the Minister must cause a document setting out —

(a) the background relating to the appeal, including the grounds set out in the notice of appeal and the comments of the Minister on those grounds; and

(b) the recommended determination of the appeal,

to be delivered to the Governor.

39. Governor to determine appeals

(1) On receiving a document delivered under section 38, the Governor may dismiss or uphold the appeal and must notify the Minister in writing accordingly.

(2) In considering whether to dismiss or uphold an appeal under subsection (1), the Governor may receive advice from such persons as ~~he or she~~the Governor chooses.

[Section 39 amended: No. 4 of 2023 s. 92.]

40. Outcome of appeal, Minister to notify appellant of

The Minister must, on receiving notification under section 39(1), notify the appellant in writing of the outcome of

the appeal and take such action as is necessary to give effect to that outcome.

Part 4 — Reserves

41. Reserving Crown land, Minister's powers as to

Subject to section 45(6), the Minister may by order reserve Crown land to the Crown for one or more purposes in the public interest.

42. Class A reserves, creating, changing etc.

(1) The Minister may by order classify a reserve as a class A reserve.

(2) A class A reserve retains a purpose specified in the relevant order made under section 41 until that purpose is changed under this section.

(3) Subject to ~~subsection~~subsections (5) and (6), the Minister may by order —

(a) add Crown land to a class A reserve; or

(b) amend a class A reserve for the purpose of correcting one or more unsurveyed boundaries of the class A reserve in such a manner that the area of the class A reserve, if reduced at all, is reduced by not more than 5%; or

(c) excise 5% or one hectare, whichever is the less, of the area of a class A reserve for the purpose of public utility services; or

(d) redescribe locations or lots, or adjust the areas of locations or lots, in a class A reserve if the external boundaries of the class A reserve remain unchanged; or

(e) amalgamate 2 or more class A reserves which have similar purposes and the same management body.

(4) Subject to ~~subsection~~subsections (5) and (6) and section 45, if the Minister proposes —

(a) to reduce the area of, or excise an area from, a class A reserve for a purpose other than a purpose referred to in subsection (3)(b) or (c); or

(b) to excise an area from a class A reserve for the purpose of creating a road; or

(c) to cancel, or change the purpose or classification of, a class A reserve,

the Minister must cause that proposal to be laid before each House of Parliament and section 43(1) then applies.

(5) The Minister must, not less than 30 days before acting under subsection (3) or (4) in relation to a class A reserve, advertise ~~his or her~~the Minister's intention so to act in a newspaper circulating throughout the State.

(6) Before acting under subsection (3) or (4) in relation to a managed reserve, the Minister must consult the management body of the reserve in accordance with section 46A.

[Section 42 amended: No. 4 of 2023 s. 19 and 92.]

43. Certain changes to class A reserves, national parks etc., parliamentary procedure as to

(1) If, after a proposal is laid before each House of Parliament under section 42(4), 44(1) or 45(4) notice of a resolution disallowing the proposal —

(a) is not given in either House of Parliament within 14 sitting days of that House after the proposal was laid before it, the proposed reduction, excision, cancellation, change, grant or permission may be implemented by order after the last day of the later of those periods of 14 sitting days; or

(b) is given in either or both of the Houses of Parliament within 14 sitting days of that House, or each of those Houses, after the proposal was laid before it, but that resolution is not lost in that House or each of those

Houses within 30 sitting days after the proposal was laid before it, the proposed reduction, excision, cancellation, change, grant or permission lapses; or

(c) is given in either or both of the Houses of Parliament within 14 sitting days of that House, or each of those Houses, after the proposal was laid before it, but that resolution is lost in that House or each of those Houses within 30 sitting days after the proposal was laid before it, the proposed reduction, excision, cancellation, change, grant or permission may be implemented by order after that loss or after the later of those losses, as the case requires.

(2) It does not matter whether or not the period of 14 sitting days referred to in subsection (1) or some of them occur during —

(a) the same session of Parliament; or

(b) the same Parliament,

as that in which the relevant proposal is laid before the House of Parliament concerned.

(3) If the notice of a resolution referred to in subsection (1) is given to a House and that resolution is not lost but, before the period of 30 sitting days mentioned in subsection (1)(b) and (c) expires, Parliament is prorogued or that House is dissolved or expires —

(a) the relevant proposal does not lapse but, subject to paragraph (b)(iii), it cannot be implemented; and

(b) on the commencement of the next session of Parliament —

(i) the Minister may cause the proposal to be laid before that House again; and

(ii) notice of a resolution disallowing the proposal may be given again in that House; and

(iii) subsection (1) applies again but as if the references in subsection (1)(b) and (c) to the

period of 30 sitting days after the proposal was laid were references to the remaining sitting days after notice of a resolution disallowing the proposal is given under subparagraph (ii).

(4) In subsection (3)(b)(iii) —

remaining sitting days means the number of sitting days equal to the portion of the period of 30 sitting days mentioned in subsection (1)(b) and (c) that remained unexpired when Parliament was prorogued, or the relevant House was dissolved or expired, as referred to in subsection (3).

[Section 43 amended: No. 59 of 2000 s. 11.]

44. Easements in class A reserves

(1) Subject to subsection (2), if the Minister proposes —

(a) to grant an easement under section 144; or

(b) to permit the creation of an easement for the purposes of section 148,

in, on, over, through or under Crown land which is classified under section 42 as a class A reserve, the Minister must cause that proposal to be laid before each House of Parliament and section 43(1) then applies.

(2) The Minister must, not less than 30 days before acting under subsection (1) in relation to a class A reserve, advertise ~~his or her~~the Minister's intention so to act in a newspaper circulating throughout the State.

[Section 44 amended: No. 4 of 2023 s. 92.]

45. Certain land subject to *Conservation and Land Management Act 1984* or *Swan and Canning Rivers Management Act 2006*, Minister's powers as to

(1) In this section —

class A nature reserve means nature reserve which is a class A reserve;

conservation park, ***national park*** and ***nature reserve*** have the same respective meanings as they have in the *Conservation and Land Management Act 1984*.

~~(2) If~~ (2) Subject to subsections (5) and (5A), if land is reserved under section 41 for the purpose of a conservation park, national park or class A nature reserve, the Minister may, with the consent of the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor, by order —

(a) add Crown land to such a reserve; or

(b) amend such a reserve for the purpose of correcting one or more unsurveyed boundaries of that reserve in such a manner that the area of that reserve, if reduced at all, is reduced by not more than 5%; or

(c) excise 5% or one hectare, whichever is the less, of the area of such a reserve for the purpose of public utility services; or

(d) redescribe locations or lots, or adjust the areas of locations or lots, in such a reserve if the external boundaries of that reserve remain unchanged; or

(e) amalgamate 2 or more such reserves which have similar purposes and the same management body.

(3) Subject to subsection (2), land that is reserved under section 41 for the purpose of a conservation park, national park or class A nature reserve remains so reserved for that purpose until, by an Act in which that land is specified, it is otherwise enacted.

(4) Subject to ~~subsection~~subsections (5) and (5A), if the Minister proposes to excise an area from a reserve referred to in subsection (2) for the purpose of creating a road, the Minister must cause that proposal to be laid before each House of Parliament and section 43(1) then applies.

(5) The Minister must, not less than 30 days before acting under subsection (2) or (4) in relation to a reserve referred to in that subsection, advertise ~~his or her~~the Minister's intention so to act in a newspaper circulating throughout the State.

(5A) Before acting under subsection (2) or (4) in relation to a managed reserve, the Minister must consult the management body of the reserve in accordance with section 46A.

(6) In respect of land in the development control area or Riverpark as defined in the *Swan and Canning Rivers Management Act 2006*, the Minister must consult the Swan River Trust before —

(a) any such land is reserved under section 41; or

(b) the purpose of any such land that is a reserve is cancelled or changed, or the area of that land is altered otherwise than by addition thereto, under this Part.

[Section 45 amended: No. 52 of 2006 s. ~~6~~6; No. 4 of 2023 s. 20 and 92.]

46. Care, control and management of reserves

(1) The Minister may by order place with any one person or jointly with any 2 or more persons the care, control and management of a reserve for the same purpose as that for which the relevant Crown land is reserved under section 41 and for purposes ancillary or beneficial to that purpose and may in that order subject that care, control and management to such conditions as the Minister specifies.

(2) The Minister may, with the consent of the management body of a reserve and of the holders of any interests within the reserve to which this subsection applies, by order vary any condition to

which the care, control and management of the reserve is subject.

(2A) Subsection (2) applies to an interest within a reserve if the interest —

(a) was granted by the management body of the reserve; or

(b) resulted from a transaction to which the management body of the reserve was a party.

(3) The Minister may —

(a) by order confer on a management body power, subject to section 18, to grant a lease or sublease or licence over the whole or any part of the Crown land within the reserve in question for the purposes referred to in subsection (1); and

(b) approve a mortgage of any such lease.

(3a) The Minister may by order —

(a) without the consent of the management body of a reserve, vary —

(i) an order made under subsection (3)(a); or

(ii) an order made under section 33 of the repealed Act or section 42 or 43 of the *Land Act 1898* [4] that subsists as an order made under subsection (3)(a),

in relation to whether or not prior approval in writing of the Minister is required to a grant of a lease, sublease, or licence; or

(b) with the consent of the management body of a reserve, vary any other condition to which —

(i) an order made under subsection (3)(a); or

(ii) an order made under section 33 of the repealed Act or section 42 or 43 of the *Land Act 1898* [4] that subsists as an order made under subsection (3)(a),

is subject.

(3b) The Minister's approval under section 18 is not required for the exercise of a power conferred under subsection (3)(a) unless —

(a) the person on whom the power is conferred is —

(i) a body corporate that is constituted for a public purpose under an enactment and is an agency of the Crown in right of the State; or

(ii) a person referred to in subsection (10)(b),

and the order provides that the Minister's approval under section 18 is required; or

(b) the person on whom the power is conferred is a person other than a person referred to in paragraph (a).

(4) If an unmanaged reserve is the subject of —

(a) a lease granted under section 47; or

(b) a licence, or a lease or profit à prendre, granted under section 48,

or of any other interest in the unmanaged reserve, the Minister may under subsection (1) place the care, control and management of that reserve with a management body subject to that licence, lease or profit à prendre or other interest, the term of which continues unbroken by that placing.

(5) An order made under subsection (1), (2), (3) or (3a) does not create any interest in Crown land in the relevant reserve in favour of the management body of that reserve.

(6) If Crown land reserved under section 41 for the purpose of recreation is leased or subleased under a power conferred under subsection (3), the lessee or sublessee may, unless the terms of the management order or the lease or sublease otherwise provide, restrict public access to the area leased.

(7) A person with whom the care, control and management of a reserve is placed by order under subsection (1) has, by virtue of

this subsection, the capacity, functions and powers to hold and deal with the reserve in a manner consistent with the order, any order conferring power on that person under subsection (3)(a) and this Act to the extent that the person does not already have that capacity or those functions and powers.

(8) Subsection (7) does not authorise a management body to perform a function or exercise a power if another enactment expressly prevents the person from performing that function or exercising that power, or expressly authorises another person to perform that function or exercise that power.

(9) Any instrument in relation to the care, control and management of a reserve entered into or given by a person holding an office referred to in subsection (10)(b)(i) or (iii) is taken to have been entered into or given by the person for the time being holding that office.

(10) In subsection (1), a reference to a person is a reference to —

(a) a person having perpetual succession;

(b) a person not having perpetual succession who is —

(i) a Minister to whom the Act specified in the relevant order is for the time being committed by the Governor; or

[(ii) deleted]

(iii) a person holding a prescribed office.

(11) If an order made under section 33 of the repealed Act subsists under clause 16(1) of Schedule 2 as if it were a management order under section 46(1), the Minister may by order vary that order to place the care, control and management of the reserve the subject of the order with a person referred to in subsection (10).

(12) An order made under section 46(1) before the coming into operation of section 12 of the *Land Administration Amendment Act 2000* may be varied by the Minister by order to place the

care, control and management of the reserve the subject of the order with a person referred to in subsection (10).

[Section 46 amended: No. 59 of 2000 s. 12(1)-(3)[5]*; No. 28 of 2015 s. ~~76~~76; No. 4 of 2023 s. 21.]*

46A. Consultation with management body

(1) For the purposes of sections 42(6), 45(5A) and 51(3), the Minister must —

(a) give written notice of the proposed action to the management body; and

(b) in the notice invite the management body to make submissions on the proposed action within 42 days after the date of the notice; and

(c) consider any submission received within the 42-day period referred to in paragraph (b) or any longer period allowed under subsection (2).

(2) The Minister may, on application by the management body, allow a longer period for submissions in response to a notice given under subsection (1).

[Section 46A inserted: No. 4 of 2023 s. 22.]

47. Lease of unmanaged reserve for reserve's purpose, Minister's powers to grant

(1) The Minister may grant a lease in respect of Crown land in an unmanaged reserve for a purpose which is in accordance with the purpose of the unmanaged reserve.

(2) A lease granted under subsection (1) may be mortgaged.

48. Lease etc. of unmanaged reserve for other purposes, Minister's powers to grant

(1) The Minister may grant leases, licences or profits à prendre in respect of Crown land in an unmanaged reserve for a purpose which is different from that or those of the unmanaged reserve

but which is compatible with or ancillary to the current use or intended future use of that Crown land for the purpose or purposes of the unmanaged reserve.

(2) A lease granted under subsection (1) cannot be mortgaged.

(3) If a licence granted under subsection (1) is transferable by the licensee, in accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of ***licence*** paragraph (d), the licence is declared not to be personal property for the purposes of that Act.

[Section 48 amended: No. 42 of 2011 s. 80.]

49. ~~Management plan~~Plan for managed reserve

(1) A management body may submit to the Minister for ~~his or her~~the Minister's approval a plan for the development, management and use of the Crown land in its managed reserve for the purpose of that managed reserve.

(2) The Minister may request a management body or proposed management body to submit to the Minister in an approved form, within such period as is specified in that request, for ~~his or her~~the Minister’s approval a plan for the development, management and use of the Crown land in the managed reserve of the management body for the purpose of that managed reserve.

(3) A management body must, before submitting a plan to the Minister under subsection (1) or in response to a request under subsection (2) —

(a) consider any conservation, environmental or heritage issues relevant to the development, management or use of the Crown land in its managed reserve for the purpose of that managed reserve; and

(b) incorporate in the plan a statement that it has considered those issues in drawing up the plan.

(4) If a management body submits a plan to the Minister under subsection (1) or in response to a request under subsection (2) and the Minister approves that plan and notifies the management body of that fact, the management body may develop, manage and use the Crown land concerned —

(a) in accordance with the plan; or

(b) if the Minister approves a variation of the plan, in accordance with the plan as varied.

[Section 49 amended: No. 4 of 2023 s. 92.]

50. Management order, revocation of

(1) When a management body —

(a) agrees that its management order should be revoked; or

(b) does not comply with its management order or with a ~~management~~ plan ~~which~~approved under section 49(4) that applies to its managed reserve or does not submit a ~~management~~ plan in compliance with a request made under section 49(2),

the Minister may by order revoke that management order.

(2) ~~If, in~~In the absence of agreement or non-compliance referred to in subsection (1), the Minister ~~considers that it is in the public interest to revoke a management order, the Minister~~ may by order revoke ~~the~~a management order~~.~~

~~(3) On~~ if the Minister considers that the revocation ~~of a management order or an order made under section 33 of the repealed Act or section 42 or 43 of the *Land Act 1898*[4] that subsists as if it were a management order under subsection (2), the former management body may claim compensation under Part 10 for any improvement made on the relevant reserve in accordance with the management order or an order made under section 33 of the repealed Act or section 42 or 43 of the *Land Act 1898*[4] that subsists as if it were a management order as if that revocation were a taking under Part 9.~~is —

(~~4~~a) in the public interest; or

(b) necessary for the purposes of a public work.

(3) Despite the revocation of a management order~~—~~

~~(a)~~ under subsection (1~~), if the Minister so specifies in the revocation order;~~) or

~~(b) under subsection~~ (2),

an interest ~~(including an interest under Part 9~~in, or ~~under the *Public Works Act 1902*) which existed in, or any~~ caveat ~~which existed~~ in respect of, the ~~relevant land immediately before that revocation~~reserve to which the management order applied continues, ~~irrespective of any subsequent creation of interests in or use of that land but~~ subject to this Act, ~~so to exist~~if the order revoking the management order specifies that the interest or caveat continues.

(4) An interest in, or caveat in respect of, a reserve that is not continued under subsection (3) is extinguished on registration of the order revoking the management order.

(4A) In subsections (3) and (4) —

interest includes —

(a) an interest as defined in section 151(1) (other than native title rights and interests as defined in that provision); and

(b) an interest under the *Public Works Act 1902*.

(5) Despite anything in an order revoking a management order, the Minister may, with the consent of the management lessee, vary the terms of a management lease continued ~~in existence by~~under subsection (~~4~~3).

(6) In subsection (5) —

management lease means lease granted or a lease that subsists as if it were a lease granted under a power conferred under section 46(3);

management lessee means person to whom a management lease is granted.

(7) In subsections (1), (2), (3), (4) and (5) —

management order includes an order made under section 46(3)(a) or an order made under section 33 of the repealed Act or section 42 or 43 of the *Land Act 1898*[4] that subsists as if it were a management order or an order made under section 46(3)(a).

[Section 50 amended: No. 59 of 2000 s. ~~13~~13; No. 4 of 2023 s. 23.]

51. ~~Cancelling, changing etc. reserves,~~ Minister's powers ~~as~~ to cancel, change purpose of or otherwise affect reserve

(1) Subject to sections 42, 43 and 45, the Minister may by order cancel, change the purpose of, reduce the area of, excise an area from or amend the boundaries of, or the locations or lots comprising, a reserve.

(2) Without limiting subsection (1), the Minister may by order excise an area from a managed reserve (other than a class A reserve or a reserve referred to in section 45(2)) if the Minister considers that the excision is —

(a) in the public interest; or

(b) necessary for the purposes of a public work.

(3) Before acting under subsection (2) in relation to a managed reserve, the Minister must consult the management body of the reserve in accordance with section 46A.

[Section 51 amended: No. 4 of 2023 s. 24.]

51AA. Compensation provisions

(1) In this section —

excision order means an order made under section 42(3), 43(1)(a) or (c), 45(2) or 51(2) that excises an area from a managed reserve;

relevant interest means —

(a) in relation to an excision order — an interest that is extinguished under section 22(3) on registration of the excision order; or

(b) in relation to a revocation order — an interest that is extinguished under section 50(4) on registration of the revocation order;

revocation order means an order made under section 50(2).

(2) On the registration of an excision order in relation to a reserve, the management body of the reserve may, unless it is a State instrumentality, claim compensation under section 204(1) for any structure erected or improvement made, in accordance with the terms of the management order, by the management body on the land excised from the reserve, as if the excision order were a taking order under Part 9.

(3) On the registration of a revocation order in relation to a reserve, the former management body of the reserve may, unless it is a State instrumentality, claim compensation under section 204(1) for any structure erected or improvement made, in accordance with the terms of the revoked management order, by the former management body on the reserve, as if the revocation order were a taking order under Part 9.

(4) On the registration of an excision order or revocation order, the holder of a relevant interest may claim compensation for the interest under section 202 as if the excision order or revocation order were a taking order under Part 9 in respect of the interest.

(5) A management body, former management body or holder of a relevant interest is not otherwise entitled to compensation in respect of the excision of an area from a managed reserve or the revocation of a management order.

(6) Part 10 applies, with all necessary changes, to a claim for compensation authorised by this section.

[Section 51AA inserted: No. 4 of 2023 s. 25.]

51A. Certain prescribed land taken to be reserved under s. 41

(1) The regulations may prescribe land that has been reserved to the Crown for one or more purposes in the public interest —

(a) by or under a written law other than section 41; and

(b) before 30 March 1998.

(2) Land prescribed by regulations referred to in subsection (1) is, by virtue of this subsection, to be regarded as having been reserved to the Crown under section 41 —

(a) for the purpose or purposes for which it was reserved by or under the other written law; and

(b) with the classification, if any, given by or under the other written law.

(3) A reference in section 42(2) to the relevant order made under section 41 is, in relation to land prescribed by regulations referred to in subsection (1), a reference to the written law, or to the instrument under the written law, by which the land was reserved, as is relevant to the case.

[Section 51A inserted: No. 76 of 2003 s. 4.]

52. Local government may ask Minister to acquire as Crown land certain land in district

(1) Subject to this section, a local government may request the Minister to acquire as Crown land —

(a) any alienated land designated for a public purpose on a plan of survey or sketch plan lodged with the Registrar; or

(b) any private road; or

(c) any alienated land in a townsite which the Minister proposes to abolish under section 26,

within the district of the local government (in this section called the ***subject land***).

(2) A request made under subsection (1) is to be accompanied by —

(a) a plan of survey or sketch plan —

(i) showing the subject land; and

(ii) approved by the Planning Commission;

and

(b) copies of all objections lodged with the local government during the period referred to in subsection (3)(b)(i) or (ii), as the case requires.

(3) Before making a request under subsection (1), a local government must —

(a) take all reasonable steps to give notice of that request to —

(i) the holder of the freehold in the subject land unless the local government holds that freehold; and

(ii) the holders of the freehold in land adjoining the subject land unless the local government holds that freehold; and

(iii) all suppliers of public utility services to the subject land;

and

(b) in the case of —

(i) alienated land referred to in subsection (1)(a) or a private road referred to in subsection (1)(b), state in the notice a period of not less than 30 days from the day of that notice during which period persons may lodge objections with it against the making of that request; or

(ii) any land referred to in subsection (1)(c), advertise or take such steps as may be prescribed to notify interested persons of an intention to make the request and state in the notification a

period of not less than 30 days from the day of that notification during which period persons may lodge objections with it against the making of that request.

(4) The Minister may, on receiving a request made under subsection (1), the accompanying plan of survey or sketch plan referred to in subsection (2)(a) and copies of all objections referred to in subsection (2)(b) —

(a) by order grant that request; or

(b) direct the local government to reconsider that request, having regard to such matters as ~~he or she~~the Minister thinks fit to mention in that direction; or

(c) refuse to grant that request.

(5) On the registration of an order made under subsection (4)(a), the subject land —

(a) ceases to belong to the holder of its freehold; and

(b) is freed from all encumbrances; and

(c) becomes Crown land.

(6) Subject to subsection (7), compensation is payable under Part 10 to any holder of the freehold in the subject land who suffers loss on the registration of an order referred to in subsection (5) as if that loss resulted from a taking under Part 9.

(7) A person with an interest in land that is a private road (including a person who has the benefit of an easement created under section 167A of the TLA) the subject of an order under subsection (4)(a) who suffers loss on the registration of the order is not entitled to compensation under Part 10.

(8) Sections 188, 189, 190 and 191 do not apply to a private road or an interest in land that is a private road if the land is the subject of an order under subsection (4)(a) and the land was taken or resumed or purportedly taken or resumed under a written law

for the purpose of a right of way or a right of way and recreation.

[Section 52 amended: No. 59 of 2000 s. ~~14~~14; No. 4 of 2023 s. 92.]

Part 5 — Roads

Division 1 — Conventional roads

53. Highways and main roads, effect of *Main Roads Act 1930* as to

To the extent that there is in the case of a road which is a highway or main road within the meaning of the *Main Roads Act 1930* an inconsistency between this Act and that Act, that Act prevails.

*[**54.** ~~Dimensional configuration and situation~~Deleted: No. 4 of ~~roads~~2023 s. 26.]*

~~A road may have —~~

~~(a) a 2 dimensional configuration consisting of —~~

~~(i) length; and~~

~~(ii) width;~~

~~or~~

~~(b) a 3 dimensional configuration consisting of —~~

~~(i) length; and~~

~~(ii) width; and~~

~~(iii) height or depth or both,~~

~~as specified in the relevant plan of survey or sketch plan lodged with the Registrar and may be situated in airspace or waters or on the surface of or below the ground (including the bed of waters) or in any combination of 2 or more of these situations.~~

55. Property in and management etc. of roads

(1) Subject to this section and to section 57, the absolute property in land comprising a road is by this subsection~~—~~ revested in the Crown.

~~(a) revested in the Crown; and~~

~~(b) in the case of land under the operation of the TLA or the *Registration of Deeds Act 1856*, removed from that operation and so revested.~~

(2) Subject to the *Main Roads Act 1930* and the *Public Works Act 1902*, the local government within the district of which a road is situated has the care, control and management of the road.

(3) The operation of subsection (1) —

(a) suspends, until the relevant road is closed under section 58, any rights to mine for minerals within the meaning of the *Mining Act 1978* excepted from the acquisition of the land reserved, declared or dedicated as that road; but

(b) does not affect~~.~~ —

(i) the functions of a local government in respect of a road of which it has the care, control and management~~.~~; or

(ii) any encumbrances to which land comprising a road is subject under section 27(4) or 56(3A) or the *Planning and Development Act 2005* section 168(10).

(4) If land comprising a ~~private~~ road is revested in the Crown under this section, a person with an interest in that land (including a person who has the benefit of an easement created under section 167A of the TLA) is not entitled to compensation because of that revesting.

(5) If land comprising a road is in the DBNGP corridor, the operation of subsections (1) and (2) does not affect State corridor rights or other rights conferred under the *Dampier to Bunbury Pipeline Act 1997* in respect of that land.

[Section 55 amended: No. 59 of 2000 s. ~~15~~15; No. 4 of 2023 s. 27.]

56. Dedication of land as road

(1) If in the district of a local government —

(a) land is reserved or acquired for use by the public, or is used by the public, as a road under the care, control and management of the local government; or

(b) in the case of land comprising a private road constructed and maintained to the satisfaction of the local government —

(i) the holder of the freehold in that land applies to the local government, requesting it to do so; or

(ii) those holders of the freehold in rateable land abutting the private road, the aggregate of the rateable value of whose land is greater than one half of the rateable value of all the rateable land abutting the private road, apply to the local government, requesting it to do so;

or

(c) land comprises a private road of which the public has had uninterrupted use for a period of not less than 10 years,

and that land is described in a plan of survey, sketch plan or document, the local government may request the Minister to dedicate that land as a road.

(2) If a local government resolves to make a request under subsection (1), it must —

(a) in accordance with the regulations prepare and deliver the request to the Minister; and

(b) provide the Minister with sufficient information in a plan of survey, sketch plan or document to describe the dimensions of the proposed road.

(3) On receiving a request ~~delivered to him or her~~ under subsection (2), the Minister must consider the request and may then —

(a) subject to subsection (5), by order grant the request; or

(b) direct the relevant local government to reconsider the request, having regard to ~~such~~any matters ~~as he or she thinks fit to mention~~the Minister specifies in that direction; or

(c) refuse the request.

(3A) Land dedicated under subsection (3)(a) is subject to any encumbrances specified in the order.

(4) On the Minister granting a request under subsection (3), the relevant local government is liable to indemnify the Minister against any claim for compensation (not being a claim for compensation in respect of land referred to in subsection (6)) in an amount equal to the amount of all costs and expenses reasonably incurred by the Minister in considering and granting the request.

(5) To be dedicated under subsection (3)(a), land must immediately before the time of dedication be —

(a) ~~unallocated~~ Crown land or, in the case of a private road, alienated land; and

(b) designated in the relevant plan of survey, sketch plan or document as having the purpose of a road.

(6) If land ~~referred to in subsection (1)(b) or (c)~~ is dedicated under subsection (3)(a), a person with an interest in that land (including a person who has the benefit of an easement created under section 167A of the TLA) is not entitled to compensation because of that dedication.

[Section 56 amended: No. 59 of 2000 s. ~~16~~16; No. 4 of 2023 s. 28.]

57. Leases in relation to roads

(1) The Minister may —

(a) grant a lease in respect of land above or below a road; or

(b) with the consent of the relevant local government, the Commissioner of Main Roads, or the Minister responsible for the administration of the *Public Works Act 1902*, as the case requires, grant a lease in respect of land comprising a road, if —

(i) there are structures above the road; or

(ii) the purpose of that lease is consistent with the use of the road by the public.

(2) When a lease is granted under subsection (1)(b) in respect of land comprising a road and the road is closed under section 58 during the subsistence of the lease, the lease continues to subsist as an interest in Crown land until it terminates in accordance with law.

[Section 57 amended: No. 59 of 2000 s. 17.]

58. Closing roads

(1) When a local government wishes a road in its district to be closed permanently, the local government may, subject to subsection (3), request the Minister to close the road.

(2) When a local government resolves to make a request under subsection (1), the local government must in accordance with the regulations prepare and deliver the request to the Minister.

(3) A local government must not resolve to make a request under subsection (1) until a period of 35 days has elapsed from the publication in a newspaper circulating in its district of notice of motion for that resolution, and the local government has considered any objections made to it within that period concerning the proposals set out in that notice.

(4) On receiving a request delivered to him or her under subsection (2), the Minister may, if he or she is satisfied that the relevant local government has complied with the requirements of subsections (2) and (3) —

(a) by order grant the request; or

(b) direct the relevant local government to reconsider the request, having regard to such matters as he or she thinks fit to mention in that direction; or

(c) refuse the request.

(5) If the Minister grants a request under subsection (4) —

(a) the road concerned is closed on and from the day on which the relevant order is registered; and

(b) any rights suspended under section 55(3)(a) cease to be so suspended.

(6) When a road is closed under this section, the land comprising the former road —

(a) becomes unallocated Crown land; or

(b) if a lease continues to subsist in that land by virtue of section 57(2), remains Crown land.

[Section 58 amended: No. 59 of 2000 s. 18(1)[6]*.]*

Division 2 — Mall reserves

59. Creation and management of mall reserves

(1) Subject to this section, a local government may request the Minister to reserve under section 41 any Crown land within its district described in a plan of survey or sketch plan for the purpose of passage through that land by —

(a) pedestrians; and

(b) vehicles used by the holders of the freehold in, and occupiers of, land adjoining that land; and

(c) other vehicles permitted access to that land under local laws made under the *Local Government Act 1995*,

and for any other compatible purpose.

(2) Before making a request under subsection (1), a local government must —

(a) advertise the purpose and details of the request in the prescribed manner; and

(b) send copies of that advertisement to the holders of the freehold in, and occupiers of, land adjoining the land in question, to suppliers of public utility services on the land in question and to the Planning Commission,

and specify in that advertisement a period of not less than 35 days from the day of that advertisement during which submissions relating to the request may be lodged with the local government.

(3) After the expiry of the period referred to in subsection (2), the local government must send to the Minister its request, together with copies of any submissions lodged with it during that period and its comments on those submissions.

(4) The Minister may, after receiving and considering a request and any accompanying submissions and comments sent to the Minister under subsection (3) —

(a) by order —

(i) grant the request; and

(ii) place the care, control and management of the mall reserve with the relevant local government or a State instrumentality;

or

(b) direct the relevant local government to reconsider the request, having regard to such matters as ~~he or she~~the Minister thinks fit to mention in that direction; or

(c) refuse the request.

(5) On the registration of an order made under subsection (4)(a) —

(a) any road within the mall reserve is closed and section 58(6) applies to any such road as if that road had been closed under section 58; and

(b) the Minister may by order confer on the management body of the relevant mall reserve power to grant a lease or licence over, or to mortgage, the whole or any part of that mall reserve for the purpose referred to in subsection (1), and a person leasing land from a management body on which that power has been conferred may, if that lease so provides, sublease the whole or any part of the land so leased for that purpose.

(6) An order made under subsection (4)(a) or (5)(b) does not create any interest in Crown land in the relevant mall reserve in favour of the management body of that mall reserve.

(7) For the purposes of —

(a) obtaining access to land adjoining a mall reserve; or

(b) installing, maintaining or removing public utility services within a mall reserve,

the land within the mall reserve is to be treated as if it were a road.

[Section 59 amended: No. 4 of 2023 s. 92.]

60. Public utility services in mall reserve, when suppliers of to be consulted

If a supplier of public utility services has public utility services in a mall reserve, and the management body of the mall reserve proposes to create, place or erect any landscape improvement or structure in such a position that access to those public utility services may be affected, that management body must consult that supplier before that creation, placement or erection occurs.

61. By-laws for management etc. of mall reserve

(1) The management body of a mall reserve may, after consulting —

(a) the holders of the freehold in, and occupiers of, land who use or depend on the mall reserve for access to that land; and

(b) any supplier of public utility services having public utility services on that land,

make, subject to subsection (3), by-laws for the care, control and management of the mall reserve.

(2) Without limiting the generality of subsection (1), by-laws referred to in that subsection may —

(a) adopt, with or without modification, such provisions of a road law as defined in the *Road Traffic (Administration) Act 2008* section 4 as may facilitate the control and management of traffic within the relevant mall reserve as if that mall reserve were a road as defined in that section; and

(b) provide for conditions subject to which the relevant management body may, if it is empowered by an order made under section 59(5) to grant leases or licences in respect of land in that mall reserve, grant leases or licences that are capable of affecting the interests of the holders of the freehold in, or occupiers of, land adjoining that mall reserve.

(3) If a management body referred to in subsection (1) is a local government, the power to make by-laws conferred on that management body by that subsection is to be construed as a power to make local laws under the *Local Government Act 1995* for the purposes for which by-laws may be made under this section.

[Section 61 amended: No. 8 of 2012 s. 117.]

62. Cancelling mall reserve and revoking management order

(1) Subject to this section, the management body of a mall reserve may request the Minister to cancel the mall reserve.

(2) Section 59(2) and (3) applies, with any necessary modifications, to a request made under subsection (1) as if that request were a request made under section 59(1) and the requesting management body were a local government.

(3) The Minister may, after receiving and considering a request and any accompanying submissions and comments sent to the Minister under section 59(3) as read with subsection (2) —

(a) by order grant the request; or

(b) direct the management body to reconsider the request, having regard to such matters as the Minister thinks fit to mention in that direction; or

(c) refuse the request.

(4) On the registration of an order made under subsection (3)(a) in respect of a mall reserve —

(a) the relevant local government or State instrumentality ceases to be the management body of the mall reserve; and

(b) the mall reserve is cancelled and the land the subject of the mall reserve is by virtue of this subsection dedicated as a road; and

(c) any by-laws made by the former management body under section 61 are repealed.

Division 3 — Public access routes

63. Terms used

In this Division —

relevant local government, in relation to any subject Crown land, means local government within the district of which the subject Crown land is situated;

subject Crown land means Crown land through which the route of a public access route passes or is intended to pass.

64. Declaring etc. public access route through Crown land

(1) Subject to this section, the Minister may, for the purpose of providing members of the public with access through Crown land to an area of recreational or tourist interest, by order delivered after all necessary consents have been obtained under subsection (3)(a) or after the expiry of the period referred to in subsection (3)(b), whichever is the later, to —

(a) the Registrar; and

(b) each holder of an interest in the subject Crown land; and

(c) the relevant local government,

declare a route —

(d) shown on a ~~diagram or~~ plan ~~incorporated~~of survey or sketch plan specified in that order and indicating the width of that route; and

(e) giving access through the subject Crown land to that area,

to be a public access route, and may by order delivered to the persons referred to in paragraphs (a), (b) and (c) vary or cancel a declaration made under this subsection.

(2) A declaration, or a variation or cancellation of a declaration, made under subsection (1) comes into operation on the day on which the relevant order is registered.

(3) Before making, or varying or cancelling, a declaration under subsection (1), the Minister must —

(a) consult each holder of an interest in the subject Crown land concerning, and obtain ~~his or her~~the holder's

consent in writing to, the proposed declaration, variation or cancellation; and

(b) cause to be published once in a newspaper circulating generally in the State a copy of the proposed declaration, variation or cancellation, together with an invitation to members of the public to comment in writing to the Minister on that declaration, variation or cancellation within such period of not less than 3 months after that publication as is specified in that invitation.

[Section 64 amended: No. 4 of 2023 s. 32 and 92.]

65. Nature, signposting and routes of public access route

(1) A public access route is, subject to this Division, to be treated as an easement granted by the Minister under section 144 in favour of members of the public generally.

(2) The Minister may cause the route of each public access route to be signposted so as —

(a) to enable members of the public using that public access route to follow it; and

(b) to inform those members of the public in general terms of the contents of section 66 and that they use that public access route entirely at their own risk.

(3) If the actual route of a public access route differs from the route of the public access route as shown on the ~~diagram or~~ plan ~~incorporated~~of survey or sketch plan specified in the relevant order delivered under section 64(1), that actual route is to be taken to be the route of the public access route.

[Section 65 amended: No. 4 of 2023 s. 33.]

66. Liability of Minister etc. in respect of public access route restricted

(1) This section applies to a person who is or at the relevant time was the Minister, the relevant local government, any holder of

an interest in the subject Crown land or any other person acting under the authority or direction of the Minister, the relevant local government or that holder.

(2) Subject to this Division, a person to whom this section applies is neither —

(a) obliged to perform any construction or maintenance in respect of a public access route; nor

(b) an occupier of premises in respect of a public access route for the purposes of the *Occupiers' Liability Act 1985*.

(3) An action in tort does not lie against a person to whom this section applies for anything that that person has in good faith done in the performance or purported performance of a function under this Division.

(4) The protection given by subsection (3) applies even though the thing done in the performance or purported performance of a function under this Division may have been capable of being done whether or not this Division had been enacted.

(5) In subsections (3) and (4), a reference to the doing of any thing includes a reference to the omission to do any thing.

(6) Members of the public use a public access route entirely at their own risk.

67. Temporary closure of public access route

The Minister may, after consulting the relevant local government —

(a) by notice published once in a newspaper circulating generally in the State, close the whole or any part of a public access route for such period as is specified in that notice; and

(b) cause such signs and barriers to be placed on or near the public access route or part of the public access route closed under this subsection as are necessary to warn

members of the public of that closure and of the duration of that closure.

68. Fence across public access route, crossing of to be provided

If the route of a public access route intersects with the line of a fence, the Minister must provide, or arrange with the relevant holder of an interest in the subject Crown land at the expense of the Minister to provide, a grid or other means of passage through or over that fence at the point of that intersection.

69. Right to use public access route

Subject to this Division, a person may travel by any means along the whole or part of a public access route which is not closed under section 67.

70. Certain effects of public access routes

(1) Subject to this Division —

(a) the rights and obligations of the holder of an interest in the subject Crown land under that interest continue to apply in respect of the subject Crown land despite the existence of the public access route; and

(b) the holder of an interest in the subject Crown land is not entitled to any compensation for any reduction in the value of that interest resulting from the declaration under section 64(1) of a public access route through the subject Crown land, but such a reduction may be taken into account by the Minister when determining or re-determining any amount payable to the Minister in respect of the subject Crown land.

(2) Nothing in this Division affects or prevents the continuance of any mortgage, charge, security or other encumbrance with which the subject Crown land is burdened.

71. Offences

(1) A person must not without reasonable excuse create or place any obstruction across or on a public access route which, or the relevant part of which, is not closed under section 67.

Penalty~~: $2~~ for this subsection: a fine of $4 000.

(2) A person using a public access route must not hinder or obstruct the proper care, control or management of the subject Crown land.

Penalty~~: $2~~ for this subsection: a fine of $4 000.

(3) A person using a public access route must not camp —

(a) on the public access route; or

(b) without the consent of the holder of an interest in the subject Crown land, elsewhere on the subject Crown land.

Penalty~~: $1~~ for this subsection: a fine of $2 000.

[Section 71 amended: No. 4 of 2023 s. 91.]

Part 6 — Sales, leases, licences, etc. of Crown land

Division 1 — General

72. Terms used

In this Part —

conditional tenure land means land transferred in fee simple subject to conditions referred to in section 75(1), which land remains subject to those conditions;

employee has the same meaning as it has in the *Public Sector Management Act 1994*;

owner of a leasehold scheme has the meaning given in the *Strata Titles Act 1985* section 3(1);

resolution without dissent has the meaning given in the *Strata Titles Act 1985* section 3(1);

scheme by-laws has the meaning given in the *Strata Titles Act 1985* section 3(1);

strata company has the meaning given in the *Strata Titles Act 1985* section 3(1);

strata lease has the meaning given in the *Strata Titles Act 1985* section 3(1).

[Section 72 amended: No. 30 of 2018 s. 148.]

73. Advisory panel, appointment of

The Minister may appoint an advisory panel to advise ~~him or her~~the Minister in respect of the exercise of the powers, and the performance of the duties, conferred or imposed on the Minister by this Part.

[Section 73 amended: No. 4 of 2023 s. 92.]

Division 2 — Sale of Crown land

74. Minister's powers as to sale of Crown land

(1) The Minister may sell Crown land and may, without limiting the generality of that power —

(a) invite expressions of interest in Crown land; and

(b) invite public tenders for the purchase of Crown land; and

(c) offer for sale or re-offer for sale Crown land at any time; and

(d) withdraw Crown land from offer for sale at any time before acceptance of that offer; and

(e) lodge positive covenants or restrictive covenants or memorials concerning the performance of conditions of sale of Crown land; and

(f) sell Crown land by public auction, public tender or private treaty; and

(g) sell Crown land subject to easements or reservations; and

(h) sell Crown land by way of terms contracts requiring instalment payments.

(2) Subject to this Part, the Minister may in relation to Crown land —

(a) determine, and alter at any time before sale, conditions and covenants on title, prices, reserve prices, terms, conditions, interest rates and penalty interest rates; and

(b) require a performance bond in respect of any such sale; and

(c) select by ballot successful applicants for the purchase of Crown land; and

(d) pay a commission to a person acting on behalf of the Minister in the sale of Crown land.

(3) The Minister is not obliged to disclose any reserve price determined in relation to Crown land under subsection (2).

75. Transfer of Crown land in fee simple subject to conditions

(1) The Minister may transfer Crown land in fee simple subject to such conditions concerning the use of the land (the ***specified use***) as the Minister determines.

(2) For the purposes of this section and of section 76, the unimproved value of conditional tenure land must be calculated as if the use of the land were not subject to any conditions.

(3) The fee simple of conditional tenure land may be transferred under subsection (1) for a nominal price or a discounted price because of the community benefit to be provided by the proposed development of the conditional tenure land for the specified use.

(3A) Conditional tenure land cannot be subdivided except by a leasehold scheme and with the written permission of the Minister.

(3B) If conditional tenure land is subdivided by a leasehold scheme –

(a) strata leases of lots in the scheme, and the scheme by-laws, are invalid to the extent that they are inconsistent with the conditions concerning the specified use; and

(b) a strata lease of a lot in the scheme is taken to contain a condition (contravention of which may lead to forfeiture of the lot to the owner of the leasehold scheme) that the lot must not be used for a purpose that is inconsistent with the conditions concerning the specified use; and

(c) if the owner of the leasehold scheme or the strata company refuses or fails to take action to enforce a strata lease or the scheme by-laws after being given a reasonable opportunity to do so, the Minister may take that action as if the Minister were the owner of the

leasehold scheme or the strata company, as the case requires.

(4) If there is a breach of the conditions concerning the specified use of conditional tenure land —

(a) the conditional tenure land is liable to be forfeited under section 35; or

(b) the Minister may recover from the holder of the freehold in the conditional tenure land —

(i) if the fee simple in the conditional tenure land was transferred under subsection (1) for a nominal price, an amount equal to the unimproved value of the conditional tenure land at the time of that recovery; or

(ii) if the fee simple in the conditional tenure land was transferred under subsection (1) for a discounted price, an amount calculated using the following formula —

$$\cancel{A = ((P - DP) / P) \times R}$$

$$A = ((P - DP) / P) \times R$$

where —

A is the amount the Minister may recover from the holder of the freehold in the conditional tenure land;

P is the unimproved value of the conditional tenure land at the time the discounted price was paid;

DP is the discounted price;

R is the unimproved value of the conditional tenure land at the time of the recovery,

by action in a court of competent jurisdiction as a debt due to the Crown.

(4A) If the holder of the freehold in conditional tenure land fails to use that land for the specified use and the Minister considers that the failure is unreasonable in all the circumstances, subsection (4) applies as if the failure were a breach of the conditions concerning the specified use of that land.

(5) Neither the fee simple, nor any other estate or interest, in conditional tenure land can be transferred without the written permission of the Minister, which may be given subject to conditions.

(6) Conditional tenure land cannot become the subject of any lease, licence, mortgage, charge, security or other encumbrance without the written permission of the Minister, which may be given subject to conditions.

(6A) Subsection (6) does not apply -

(a) to an individual lot in a leasehold scheme (rather than to the parcel of land subdivided by the scheme); or

(b) in circumstances prescribed in the regulations.

(6B) The Minister may, by order, on the application of the holder of the freehold in conditional tenure land, vary the conditions concerning the specified use.

(6C) The Minister may charge the holder an amount for variation of the conditions concerning the specified use, being the difference between the unimproved value of the conditional tenure land, as determined by the Minister on the advice of the Valuer-General, if it were transferred at the time of the variation subject to the conditions as varied and the price that was paid for the conditional tenure land when it was transferred to the holder or a predecessor of the holder under subsection (1).

(6D) Subject to the regulations, an application for variation of the conditions concerning the specified use must be accompanied by —

(a) the written consent of each person with a lease, licence, mortgage, charge, security or other encumbrance over the conditional tenure land (disregarding any such lease, licence, mortgage, charge, security or encumbrance over an individual lot in a leasehold scheme rather than over the parcel of land subdivided by the scheme); and

(b) if the land is subdivided by a leasehold scheme, evidence to the satisfaction of the Minister that the strata company has passed a resolution without dissent in favour of the variation.

(7) The Minister may by order, on the application of the holder of the freehold in conditional tenure land accompanied, subject to subsection (7a), by payment to the Minister of the relevant amount referred to in subsection (4)(b)(i) or (ii), cancel the conditions to which the use of the conditional tenure land is subject.

(7a) The Minister may in prescribed circumstances, with the prior approval of the Treasurer, waive in whole or part the payment of the relevant amount referred to in subsection (4)(b)(i) or (ii), subject to such conditions as the Minister determines.

(8) The rule against perpetuities does not apply to conditions referred to in subsection (1).

[Section 75 amended: No. 59 of 2000 s. 19; No. 30 of 2018 s. 149; No. 4 of 2023 s. 34.]

76. Mortgagee of conditional tenure land, duties of in case of mortgagor's default

(1) If the holder of the freehold in conditional tenure land subject to a mortgage defaults under the mortgage, the mortgagee must give the Minister notice in writing not less than 28 days before the mortgagee exercises any power under the mortgage in respect of that default.

(2) Subject to subsection (3), the mortgagee must not exercise ~~his or her~~the mortgagee's power of sale under the mortgage until the Minister has been paid the relevant amount referred to in section 75(4)(b)(i) or (ii) in respect of the conditional tenure land.

(3) The Minister may allow the mortgagee to exercise the power of sale referred to in subsection (2) before payment of the relevant amount referred to in that subsection if the mortgagee gives the Minister security to the satisfaction of the Minister for the payment of that amount on completion of that exercise.

(4) When the fee simple of the conditional tenure land is sold by the mortgagee in accordance with this section, the land ceases to be subject to the conditions referred to in section 75(1).

[Section 76 amended: No. 4 of 2023 s. 92.]

77. Mortgagee's sale under s. 76, application of purchase moneys from

The proceeds of a sale by a mortgagee in accordance with section 76 are to be applied —

(a) first, in payment of the amount referred to in section 75(4)(b)(i) or (ii) if payment of that amount has not already been made under section 76; and

(b) second, in payment of any amount owed by the mortgagor under the mortgage; and

(c) third, in payment of the expenses of and incidental to that sale; and

(d) fourth, in payment of amounts outstanding in respect of all subsequent encumbrances in respect of the land concerned; and

(e) fifth, in payment of any remaining surplus to the beneficial holder of the freehold.

78. Development etc. of Crown land, Minister may enter into joint venture for

(1) The Minister may in accordance with the regulations enter into a joint venture with another person for the purpose of developing and selling Crown land.

(2) The expenses and income of a joint venture entered into under subsection (1) may be shared between the Minister and the other joint venturer by agreement.

Division 3 — Leasing of Crown land

79. Minister's powers as to lease of Crown land

(1) ~~Subject to Part 7, the~~The Minister may grant leases of Crown land for any purpose and may, without limiting the generality of that power —

(a) grant leases of Crown land by public auction, public tender or private treaty; and

(b) fix the duration of any such lease; and

(c) determine rentals, premiums, conditions and penalties in respect of any such lease; and

(d) require a performance bond in respect of any such lease.

(2) The Minister may pay a commission to a person acting on behalf of the Minister in the granting of leases of Crown land.

(3) Without limiting the generality of conditions referred to in subsection (1)(c), those conditions include —

(a) options for renewal of leases granted; and

(b) options to purchase the fee simple of the Crown land leased,

under subsection (1), and conditions for the variation of those conditions.

(4) The Minister may at any time extend the term~~ of a lease, other than a pastoral lease, having effect under this Act~~, or vary the provisions, of~~ such~~ a lease.

(5) Any sublease or other interest granted under a lease —

(a) the term of which is extended; or

(b) the provisions of which are varied,

under subsection (4) continues to have effect insofar as it is permitted to do so by that extension or variation.

(6) The operation of this section is subject to Parts 6A and 7.

[Section 79 amended: No. 4 of 2023 s. 35.]

80. Conditional purchase leases

(1) In this section —

conditional purchase lease means conditional purchase lease granted under subsection (2).

(2) The Minister may grant to an applicant a conditional purchase lease of any Crown land.

(3) A conditional purchase lease may be granted —

(a) for such term and subject to the payment of such rental, instalments and interest as the Minister thinks fit; and

(b) on condition that improvements specified in the conditional purchase lease are made within the period so specified; and

(c) on such other conditions and subject to such covenants, reservations or exemptions as the Minister thinks fit or as are prescribed.

(4) When the Minister is satisfied that the lessee under a conditional purchase lease —

(a) has made improvements specified in the conditional purchase lease under subsection (3)(b); and

(b) has complied with all conditions, covenants, reservations and exemptions to which the conditional purchase lease is subject,

the Minister must transfer that Crown land in fee simple to that lessee —

(c) if a purchase price was fixed when the conditional purchase lease was granted, on payment to ~~him or her~~the Minister of the full purchase price, whether or not paid by rental that the conditional purchase lease provides or the Minister agrees may be offset against the purchase price, together with any other outstanding rental or outstanding interest as the Minister may require the lessee to pay before the Crown land is transferred to the lessee; or

(d) if a purchase price was not fixed when the conditional purchase lease was granted, on payment to ~~him or her~~the Minister of the full purchase price, which price is to be fixed by the Minister or calculated in accordance with the terms of the conditional purchase lease, together with any other outstanding rental or outstanding interest as the Minister may require the lessee to pay before the Crown land is transferred to the lessee.

(5) In determining whether under subsection (4)(c) or (d) the full purchase price has been paid, the Minister is to offset against the price fixed by ~~him or her~~the Minister or calculated in accordance with the terms of the conditional purchase lease any rental payment that the conditional purchase lease provides or the Minister agrees may be offset against the purchase price.

(6) If the lease is mortgaged, is affected by another interest or is subject to a caveat and the lessee, during the continuance of the mortgage, other interest or caveat, becomes entitled under subsection (4), the mortgage, other interest or caveat is by operation of this subsection transferred to the fee simple and applies to the fee simple when transferred in all respects as if

the fee simple had been referred to in the mortgage, other interest or caveat and has the same effect in respect of the fee simple as if it were a mortgage, other interest or caveat under the TLA.

[Section 80 amended: No. 59 of 2000 s. ~~20~~20; No. 4 of 2023 s. 92.]

81. Surrender of lease of Crown land

(1) The Minister may accept the surrender of a lease from the lessee of the relevant Crown land in respect of the whole or any part of the area to which the lease applies.

(2) On the acceptance of the surrender of a lease of Crown land under subsection (1), any sublease under that lease, and any interest or caveat dependent on such a sublease, continue to subsist unless that sublease is forfeited under section 35 or otherwise terminates according to law.

(3) The Minister may by order, with the consent of the relevant sublessee, vary the conditions to which a sublease which continues to subsist by virtue of subsection (2) is subject.

(4) Subsections (2) and (3) do not apply to the surrender of a pastoral lease.

[Section 81 amended: No. 4 of 2023 s. 36.]

81A. Removal of expired registered leases from certificate of Crown land title

(1) In this section —

term, in relation to a registered lease, includes any period for which the lease was extended under section 79(4) or renewed under an option to renew.

(2) This section applies if —

(a) at least 12 months have passed since the expiry of the term of a registered lease; and

(b) the Minister is satisfied that —

(i) the former lessee is no longer in occupation of the land that was the subject of the lease; and

(ii) there is no ongoing tenancy arrangement between the former lessor and the former lessee; and

(iii) the former lessor is no longer collecting rent from the former lessee; and

(iv) any other requirements prescribed for the purposes of this paragraph have been met.

(3) The Minister may direct the Registrar to remove from the certificate of Crown land title or qualified certificate of Crown land title on which the lease is registered —

(a) the lease; and

(b) any encumbrance registered in respect of the lease.

(4) The Registrar must comply with a direction given under subsection (3).

[Section 81A inserted: No. 4 of 2023 s. 37.]

Division 4 — Provisions not restricted to either sale or leasing of Crown land

82. Revesting land held by Crown in fee simple in Crown

(1) The Minister may by order revest in the Crown, with or without existing encumbrances, land held by the Crown in fee simple.

(2) Land revested under subsection (1) is Crown land and may be dealt with accordingly by the Minister under this Act.

83. Transfer etc. of Crown land to advance Aboriginal people

(1) The Minister may for the purposes of advancing the interests of any Aboriginal person or persons —

(a) transfer Crown land in fee simple; or

(b) grant a lease of Crown land, whether for a fixed term or in perpetuity,

to that person or those persons, or to an approved body corporate, on such conditions as the Minister thinks fit in the best interests of the person or persons concerned.

(2) Subsection (1) does not limit the right of any Aboriginal person, or a body corporate, to apply for and acquire an interest in or the fee simple of Crown land under any other provision of this Act.

(3) In subsection (1) —

approved body corporate means a body corporate that the Minister is satisfied —

(a) is to hold the land or the lease in trust for the Aboriginal persons concerned; or

(b) has a membership that comprises only the Aboriginal persons concerned.

[Section 83 inserted: No. 61 of 1998 s. 5.]

84. Auctioneers of Crown land, functions of

(1) If Crown land is to be sold in fee simple or leased by public auction on behalf of the Minister by —

(a) an employee, the employee may so sell or lease without being the holder of a licence under the *Auction Sales Act 1973*; or

(b) a person who is not an employee, that person must be the holder of a licence under the *Auction Sales Act 1973* and may so sell or lease on a commission basis.

(2) A person acting as auctioneer for the purposes of the sale in fee simple or lease of any Crown land on behalf of the Minister may —

(a) set the monetary levels at which bids may be made; and

(b) negotiate that sale or lease with the highest bidder if the bidding does not reach the reserve price for the fee simple or lease of that Crown land.

85. Sale etc. of Crown land subject to condition etc. it be subdivided

(1) The Minister may —

(a) sell the fee simple in; or

(b) lease with option to purchase,

Crown land subject to conditions, or to any regulations, requiring the purchaser to subdivide and develop the land concerned.

(2) If the relevant conditions or regulations referred to in subsection (1) have been complied with or, in the case of those conditions, security has been given to the satisfaction of the Minister for the purpose of ensuring compliance with those conditions, the Minister may, with the approval of the Planning Commission, permit the staged transfer in fee simple of Crown land sold under that subsection.

86. Sale etc. of Crown land by private treaty to Commonwealth etc.

The Minister may sell by private treaty the fee simple in, or lease, Crown land —

(a) to the Commonwealth or to another State or to a Territory; and

(b) to any instrumentality of the Commonwealth or of a State or Territory empowered to purchase land; and

(c) subject to the *Local Government Act 1995*, to any local government.

87. Sale etc. of Crown land for amalgamation with adjoining land

(1) In this section —

adjoining land means the land referred to in subsection (2)(b) or (3)(b), as the case requires.

(2) Whenever the Minister considers that a parcel of Crown land is —

(a) unsuitable for retention as a separate location or lot, or for subdivision and retention as separate locations or lots, because of its geographical location, potential use, size, shape or any other reason based on good land use planning principles; but

(b) suitable for —

(i) conveyance in fee simple to the holder of the fee simple; or

(ii) disposal by way of lease to the holder of a lease granted by the Minister under this Act,

of land adjoining that parcel,

the Minister may, with the consent of that holder and on payment to the Minister of the price, or of the initial instalment of rent, as the case requires, agreed with that holder, by order convey that parcel in fee simple or lease that parcel to that holder and amalgamate that parcel with the adjoining land.

(3) If —

(a) a parcel of land comprised in a road that is closed, whether under this Act or the repealed Act, is Crown land; and

(b) part of the land through which that closed road passes or which it adjoins is taken under Part 9 for the purpose of a road to replace that closed road; and

(c) as a result of that taking, the person holding the fee simple of, or a lease granted by the Minister under this

Act in respect of, the adjoining land (the ***landholder***) is entitled to compensation under ~~that~~ Part 10 from the person who took that part (the ***taker***),

the Minister may, with the consent of the landholder and the taker and on payment to the Minister of any price, or of any initial instalment of rent, as the case requires, agreed with the landholder, by order —

(d) convey to the landholder in fee simple or lease to the landholder, as the case requires, by way of satisfaction or part satisfaction of the compensation payable to the landholder, so much of that parcel as is, in the opinion of the Minister, equivalent in value to the whole or the relevant part of that compensation; and

(e) amalgamate the land so conveyed or leased with the adjoining land.

(4) When land has been conveyed or leased under subsection (3)(d), the taker must, if required by the Minister to do so, pay to the Minister forthwith the amount of the compensation in satisfaction of which that land has been so conveyed or leased.

(5) On the amalgamation under subsection (2) or (3) of the whole or part of a parcel of Crown land with the adjoining land —

(a) that parcel or part becomes, if the adjoining land is —

(i) land held in freehold, part of the adjoining land and held in the same freehold; or

(ii) Crown land held under lease, part of the adjoining land and held under the same lease,

and, if the adjoining land is subject to any encumbrance, that parcel or part becomes subject to that encumbrance as if it had been part of the adjoining land when that encumbrance was created; and

(b) the Registrar must alter the certificate of title or the certificate of Crown land title and the Register so as to

show that that parcel or part forms part of the adjoining land.

(6) If the freehold or lease of the adjoining land is, at the time of the amalgamation of the adjoining land with the whole or part of a parcel of Crown land under subsection (2) or (3), in the course of being sold under a contract of sale and the purchaser under that contract consents —

(a) the purchase price or consideration set out in that contract is to be taken to be increased by an amount equal to the unimproved value of that whole or part; and

(b) the conditions of that contract are taken to apply to that whole or part as if that whole or part had been part of the adjoining land when that contract was entered into.

(7) Despite anything in subsection (6), that subsection does not affect the rights of any person in respect of a claim that has before the amalgamation referred to in that subsection been settled or decided.

[Section 87 amended: No. 4 of 2023 s. 38.]

88. Option to purchase or lease Crown land, grant of

(1) The Minister may —

(a) grant an option to purchase the fee simple in, or lease, any Crown land; and

(b) fix the consideration to be paid for any such option; and

(c) impose conditions on the exercise of any such option.

(2) A purchaser or lessee under an option granted under subsection (1) may, with the permission of the Minister, offset the whole or any portion of the relevant consideration fixed under that subsection against the purchase price or rent payable in respect of the land concerned.

89. Certain lessees of Crown land may purchase, or purchase options to purchase, the land

(1) The holder of a lease, other than a diversification lease or pastoral lease, of any Crown land may apply to the Minister to purchase —

(a) the fee simple of the Crown land; or

(b) an option to purchase that fee simple.

(2) The Minister may grant or refuse to grant an application made under subsection (1).

(3) If the Minister grants an application under subsection (1), the applicant is entitled, on payment of a price fixed by the Minister for the sale of —

(a) the fee simple and on compliance with such conditions, if any, as are prescribed, to obtain in lieu of the lease the fee simple of the relevant Crown land; or

(b) the option and on compliance with such conditions, if any, as are prescribed, to obtain an option to purchase the fee simple of the relevant Crown land.

(4) If the lease is mortgaged, is affected by another interest or is subject to a caveat and the lessee, during the continuance of the mortgage, other interest or caveat, becomes entitled under subsection (3), the mortgage, other interest or caveat is by operation of this subsection transferred to and applies to the fee simple when purchased in all respects as if the fee simple had been referred to in the mortgage, other interest or caveat and has the same effect in respect of the fee simple as if it were a mortgage, other interest or caveat under the TLA.

[Section 89 amended: No. 59 of 2000 s. ~~21~~21; No. 4 of 2023 s. 39.]

90. Overlap of lease or easement and mining tenement, effect of

If an area to which a lease or easement proposed to be granted under this Act relates coincides or overlaps with the area to which an existing mining tenement within the meaning of the *Mining Act 1978* relates, that lease or easement has effect without that mining tenement having to be surrendered wholly or in part under section 95 of that Act.

91. Licences and profits à prendre over Crown land, grant of

(1) The Minister may grant a licence or profit à prendre in respect of Crown land for any purpose.

(2) The Minister may —

(a) fix or extend the duration of; or

(b) determine fees and conditions in respect of; or

(c) review; or

(d) with the consent of its holder, amend the provisions of,

any licence or profit à prendre granted under subsection (1).

(3) The Minister may on the breach of any condition to which a licence granted under subsection (1) is subject, terminate that licence.

(4) The Minister may accept the surrender of a profit à prendre granted under subsection (1) from its holder in respect of the whole or any part of the area to which that profit à prendre applies.

(5) Nothing in this Act prevents the simultaneous existence on the same area of Crown land of —

(a) a licence or profit à prendre granted under subsection (1); and

(b) a mining, petroleum or geothermal energy right,

if the Minister to whom the administration of the relevant Act referred to in the definition of ***mining, petroleum or geothermal***

energy right in section 3(1) is for the time being committed by the Governor, or a public service officer of the department that is principally assisting in the administration of the relevant Act, who is authorised in writing by that Minister to do so, approves of that area being used both for the purposes of that licence or profit à prendre and the purposes of the mining, petroleum or geothermal energy right.

(6) If a licence granted under subsection (1) is transferable by the licensee, in accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of ***licence*** paragraph (d), the licence is declared not to be personal property for the purposes of that Act.

(7) The operation of this section is affected by the *Land Administration (South West Native Title Settlement) Act 2016* Part 4.

[Section 91 amended: No. 35 of 2007 s. 98(6); No. 8 of 2010 s. 13; No. 42 of 2011 s. 81; No. 10 of 2016 s. 28.]

92. Improvements to leased etc. Crown land vest in Crown

(1) When a lease or licence ~~granted under this Part~~ terminates, the property in any improvements made on the relevant Crown land vests in the Crown.

(2) Subsection (1) does not apply to a lease if —

(a) ~~there is an option to renew~~ the lease is a pastoral lease; or

(b) the lease contains express provision to the contrary; or

(c) the lease is renewed under an option to renew the lease; or

~~(c) there is an agreement between the Minister and the lessee to transfer~~ (d) the relevant Crown land is transferred in fee simple to the lessee; or

(e) immediately after the termination of the lease, a new lease held by the same lessee commences over the relevant Crown land.

(3) On the termination of a lease to which subsection (1) applies, the former lessee may, with the permission of the Minister —

(a) remove all fixtures from the relevant Crown land within a period of 3 months after that termination; or

(b) cause improvements to the relevant Crown land made by that lessee to be valued to enable the price of those improvements to be paid to that lessee by any incoming lessee of, or any purchaser of the fee simple in, that Crown land.

[Section 92 amended: No. 4 of 2023 s. 40.]

Part 6A — Diversification leases

[Heading inserted: No. 4 of 2023 s. 41.]

Division 1 — Application of Part

[Heading inserted: No. 4 of 2023 s. 41.]

92A. Leases to which this Part applies

This Part does not apply to a lease unless the lease specifies that it is granted under section 92B.

[Section 92A inserted: No. 4 of 2023 s. 41.]

Division 2 — Grant of diversification lease

[Heading inserted: No. 4 of 2023 s. 41.]

92B. Minister's powers as to grant of diversification lease

(1) The Minister may grant a lease (a ***diversification lease***) over Crown land in accordance with Part 6 and this Part.

(2) A diversification lease may be granted for any purpose or purposes.

[Section 92B inserted: No. 4 of 2023 s. 41.]

Division 3 — Conditions of diversification lease

[Heading inserted: No. 4 of 2023 s. 41.]

92C. Provisions that can be included in diversification lease

(1) The Minister may include in a diversification lease any terms, reservations, conditions, covenants or penalties not inconsistent with this Act.

(2) A diversification lease may include 1 or more options to renew the lease.

(3) A diversification lease cannot include an option to purchase the fee simple of the Crown land leased.

(4) The Minister may, when granting a diversification lease or at any time during the term of a diversification lease, identify in the diversification lease any land under the lease for the purposes of the *Mining Act 1978* section 20(5AA).

(5) Subsection (4) does not limit the power of the Minister under section 79(4) to vary the provisions of a diversification lease.

[Section 92C inserted: No. 4 of 2023 s. 41.]

92D. Non-exclusive possession of land under diversification lease

A diversification lease does not confer a right of exclusive possession on the diversification lessee.

[Section 92D inserted: No. 4 of 2023 s. 41.]

92E. Reservation in favour of Aboriginal persons

Aboriginal persons may at all times enter upon any unenclosed and unimproved parts of the land under a diversification lease to seek their sustenance in their accustomed manner.

[Section 92E inserted: No. 4 of 2023 s. 41.]

92F. Diversification lessee's duties as to leased land

(1) A diversification lessee must, to the satisfaction of the Minister, manage the land under the lease using methods of best environmental management practice appropriate to the area where the land is situated, having regard to the permitted use or uses of the land.

(2) Without limiting subsection (1), a diversification lessee must, to the satisfaction of the Minister —

(a) maintain the condition of land under the lease; and

(b) take measures to prevent or mitigate the effects of land degradation (as defined in the *Soil and Land*

Conservation Act 1945 section 4) on land under the lease.

[Section 92F inserted: No. 4 of 2023 s. 41.]

Division 4 — Forfeiture of diversification lease

[Heading inserted: No. 4 of 2023 s. 41.]

92G. Issue of forfeiture notice

If the Minister is satisfied that a diversification lessee has failed to comply with a provision of this Act or of the lease, the lease is liable to forfeiture under section 35 as if that failure to comply were the breach of a condition or covenant referred to in that section.

[Section 92G inserted: No. 4 of 2023 s. 41.]

92H. Criminal liability not affected by forfeiture

(1) The liability of any person to be prosecuted for an offence against this Act or the *Soil and Land Conservation Act 1945* is not affected by the forfeiture of a diversification lease to which the offence related.

(2) The liability of any person to the forfeiture of a diversification lease is not affected by the imposition of a penalty for an offence in relation to a matter to which the liability to forfeiture related.

[Section 92H inserted: No. 4 of 2023 s. 41.]

Division 5 — Notification of certain soil conservation notices

[Heading inserted: No. 4 of 2023 s. 41.]

92I. Commissioner to notify Minister of certain soil conservation notices

Without affecting or limiting the powers of the Commissioner in relation to diversification leases, before issuing a soil

conservation notice that relates to land under a diversification lease the Commissioner must notify the Minister in writing of the terms of the proposed notice.

[Section 92I inserted: No. 4 of 2023 s. 41.]

Part 7 — Pastoral leases

Division 1 — Introductory

93. Terms used

In this Part —

approved land management accreditation system means a land management accreditation system approved by the Minister under section 100C(2);

authorised stock means stock, or its produce, that is prescribed;

~~***Board*** means the Board established by section 94;~~

~~***Commissioner*** means the Commissioner of Soil and Land Conservation appointed under the *Soil and Land Conservation Act 1945*;~~

certified pastoral lessee means a pastoral lessee who is currently certified under an approved land management accreditation system that applies to the lease;

company has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

land condition standards has the meaning given in section 100A(1);

land management accreditation system has the meaning given in section 100C(1);

land management guidelines has the meaning given in section 100A(3);

pastoral purposes means the purposes of —

(a) the commercial grazing of authorised stock; and

(b) agricultural, horticultural or other supplementary uses of land inseparable from, essential to, or normally carried out in conjunction with the grazing of authorised stock, including the production of stock feed; and

(c) activities ancillary to the activities mentioned in paragraphs (a) and (b);

permitted stock means —

(a) authorised stock; and

(b) prohibited stock for which a permit has been issued under section 122A;

prohibited stock means stock, or its produce, other than authorised stock~~;~~.

~~***soil conservation notice*** means a soil conservation notice issued under the *Soil and Land Conservation Act 1945*.~~

[Section 93 amended: No. 59 of 2000 s. 22; No. 10 of 2001 s. 220; No 4 of 2023 s. 42.]

Division 2 — The Pastoral Lands Board

94. Board established

This section establishes a Board under the name of the Pastoral Lands Board of Western Australia.

95. Functions of Board

The functions of the Board are —

(a) to advise the Minister on policy relating to the pastoral industry and the administration of pastoral leases; and

(b) to administer pastoral leases in accordance with this Part; and

(c) to ensure that pastoral leases are managed on an ecologically sustainable basis; and

(d) to develop policies to prevent the degradation of rangelands; and

(e) to develop policies to rehabilitate degraded or eroded rangelands and to restore their pastoral potential; and

(f) to consider applications for the subdivision of pastoral land and make recommendations to the Minister in relation to them; and

(g) to establish and evaluate a system of pastoral land monitoring sites; and

(h) to monitor the numbers and the effect of stock and feral animals on pastoral land; and

(i) to conduct or commission research into any matters that it considers are relevant to the pastoral industry; and

(j) to provide such other assistance or advice as the Minister may require in relation to the administration of this Part; and

(k) to exercise or perform such other functions as it may be given under this or any other Act.

96. Minister may give directions to Board

(1) The Minister may give directions in writing to the Board with respect to the exercise or performance of its functions, either generally or in relation to a particular matter, and the Board is to give effect to any such direction.

(2) The text of any direction given under subsection (1) is to be included in the annual report submitted by the accountable authority of the Department under Part 5 of the *Financial Management Act 2006*.

[Section 96 amended: No. 5 of 2005 s. 42; No. 77 of 2006 Sch. 1 cl. 93(5).]

97. Members of Board, appointment of etc.

(1) The Board consists of a chairperson appointed by the Minister and 7 other members, of whom —

(a) 3 are to be appointed by the Minister from among persons who hold, or have held, an interest in a pastoral

lease, or are, or have been, shareholders in a company with a beneficial interest in a pastoral lease; and

(b) one is to be the chief executive officer of the department principally assisting in the administration of the *Biosecurity and Agriculture Management Act- 2007*, or ~~his or her~~that chief executive officer's appointee from time to time; and

(c) one is to be the chief executive officer of the Department, or ~~his or her~~that chief executive officer's appointee from time to time; and

(d) one is to be appointed by the Minister ~~from among persons~~on the recommendation of the Minister administering the *Environmental Protection Act 1986*, and is to be a person with expertise in the field of flora, fauna or land conservation management; and

(e) one is to be appointed by the Minister ~~from among Aboriginal persons~~on the recommendation of the Minister administering the *Aboriginal Affairs Planning Authority Act 1972*, and is to be an Aboriginal person with experience in pastoral leases.

(1a) In this section the chairperson and the members referred to in subsection (1)(a), (d), and (e) are called the ***appointed members***.

(2) The Minister may appoint, for each appointed member except the chairperson, a deputy with the same qualifications.

(3) A deputy may take the place of the member ~~to~~for whom ~~he or she is~~they are appointed deputy at any meeting of the Board at which the member is not present, and for the purpose of acting at the meeting has the powers and entitlements of the member.

(4) An appointed member is to be appointed for such term, not exceeding 3 years, as is specified in the instrument of appointment, and may be re-appointed.

(5) The Minister may terminate the appointment of an appointed member or deputy and, in that event or in the event of the death

or resignation of such a member or deputy, may appoint another qualified person to the vacancy in accordance with this section.

(6) An appointment as deputy does not terminate by reason only that the member in respect of whom the deputy was appointed has ceased to hold office; and in that event the deputy may attend meetings under subsection (3) while the vacancy continues.

(7) The regulations may specify terms and conditions of appointment of appointed members and their deputies.

(8) The terms and conditions of appointment of an appointed member or ~~his or her~~the member's deputy, if not specified in this Act or the regulations, are as specified in the instrument of appointment or as varied thereafter by the Minister in writing.

(9) An appointed member or deputy receives such remuneration as may be determined by the Minister on the recommendation of the Public Sector Commissioner.

[Section 97 amended: No. 59 of 2000 s. 23; No. 24 of 2007 s. 11; No. 39 of 2010 s. ~~89~~89; No. 4 of 2023 s. 43 and 92.]

98. Procedure of Board; quorum

(1) The Board may adopt its own rules of procedure not inconsistent with this Act or the regulations.

(2) At a meeting of the Board —

(a) 5 members constitute a quorum; and

(b) if the chairperson is absent, the members present are to appoint one of their number to preside at the meeting.

99. Particular duties of members

(1) A member of the Board must at all times act honestly and diligently in exercising or performing ~~his or her~~the member's functions under this Part.

(2) If a matter is before a meeting for consideration and a ~~person~~member present at the meeting has a direct or indirect pecuniary interest in the matter —

(a) the member must disclose to the other members present at the meeting, as soon as possible after the relevant facts have come to ~~his or her~~the member's knowledge, that ~~he or she~~the member has an interest; and

(b) the disclosure is to be recorded in the minutes of the meeting; and

(c) the member must not subsequently be present during any consideration or discussion of, and may not vote on any determination of, the matter.

~~(3) A member must not disclose any information acquired by virtue of the exercise or performance of any function under this Act unless the disclosure is made in connection with the carrying out of this Act or under a legal duty.~~

~~(4) A member must not make use of any information acquired by virtue of the exercise or performance of his or her functions to gain, directly or indirectly, an improper advantage for himself or herself or to cause detriment to any person.~~

[(3), (4) deleted]

(5) A member who commits a breach of any provision of this section —

(a) is liable to the Crown for any profit made by ~~him or her~~the member as a result of the breach of that provision; and

(b) commits an offence and is liable to a fine of $10 000.

(6) This section is in addition to and not in derogation of any other law relating to the duty or liability of the holder of a public office.

[Section 99 amended: No. 4 of 2023 s. 44 and 92.]

100. Protection from personal liability for members

(1) An action in tort does not lie against a member of the Board for anything that the member has done in good faith in the exercise or performance, or purported exercise or performance, of a function under this Part.

(2) The protection given by this section applies even if the thing done in the performance or purported performance of a function under this Act might have been capable of being done if this Part had not been enacted.

(3) This section does not relieve the Crown of any liability that it might have for the doing of anything by a member of the Board.

(4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

Division 2A — Standards, guidelines and accreditation systems

[Heading inserted: No. 4 of 2023 s. 45.]

100A. Land condition standards and land management guidelines

(1) The Board may issue standards (***land condition standards***) setting out benchmarks and objectives in relation to the condition of land held under pastoral leases.

(2) The Board must consult the Commissioner before —

(a) issuing land condition standards; or

(b) amending or revoking land condition standards.

(3) The Board may issue guidelines (***land management guidelines***) that provide guidance on best practice for the management of land held under pastoral leases.

(4) The purpose of land condition standards and land management guidelines is —

(a) to assist the Board and the Minister in the performance of functions under this Part; and

(b) to provide information and guidance to pastoral lessees and other persons or bodies that might be affected by, or have an interest in, decisions under this Part; and

(c) to assist in the development of land management accreditation systems to be approved by the Minister under section 100C.

(5) Without limiting subsections (1) and (3), land condition standards and land management guidelines may —

(a) apply to all pastoral leases or to pastoral leases in a particular region of the State or of a particular class; or

(b) make different provision in relation to pastoral leases in different regions of the State or pastoral leases of different classes.

(6) The powers conferred on the Board under subsection (1) to issue land condition standards and under subsection (3) to issue land management guidelines include the power to amend or revoke those standards and guidelines.

(7) Land condition standards and land management guidelines, and any amendment to or revocation of those standards or guidelines, must be published in the prescribed way.

[Section 100A inserted: No. 4 of 2023 s. 45.]

100B. Regard to standards and guidelines in performance of functions under this Part

(1) Subject to subsection (2), the Board and the Minister may have regard to land condition standards and land management guidelines in performing functions under this Part.

(2) The Board must have regard to land condition standards and land management guidelines in performing functions under sections 108C, 109(2) and 111A(1).

(3) Nothing in subsection (1) or (2) —

(a) derogates from the duty of the Board or Minister to exercise their discretion in a particular case; or

(b) precludes the Board or Minister from having regard to matters not set out in land condition standards or land management guidelines; or

(c) requires the Board or Minister to have regard to land condition standards or land management guidelines that are inconsistent with a provision of this Act.

[Section 100B inserted: No. 4 of 2023 s. 45.]

100C. Minister may approve land management accreditation systems

(1) For the purposes of this Part, a ***land management accreditation system*** is a system, participation in which is voluntary, and the purpose of which is to —

(a) improve the condition and management of land held under pastoral leases by encouraging best practice in the management of the land; and

(b) give pastoral lessees the opportunity to formally demonstrate best practice in the management of land, by providing for a process under which pastoral lessees can, if they meet the requirements of the system, receive and maintain certification under the system.

(2) The Minister may approve one or more land management accreditation systems.

(3) The Minister must not approve a land management accreditation system unless the Minister is satisfied that the system is consistent with land condition standards and land management guidelines.

(4) The power conferred on the Minister under subsection (2) to approve a land management accreditation system includes the power to revoke that approval.

(5) The following must be published in the prescribed way —

(a) notice of the approval of a land management accreditation system and a document setting out the approved system;

(b) notice of the revocation of an approval of a land management accreditation system.

[Section 100C inserted: No. 4 of 2023 s. 45.]

100D. Status of standards, guidelines and approved systems

(1) Land condition standards, land management guidelines and approved land management accreditation systems are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(2) If there is an inconsistency between a provision of this Act and a provision of land condition standards, land management guidelines or an approved land management accreditation system, the provision of this Act prevails.

[Section 100D inserted: No. 4 of 2023 s. 45.]

Division 3 — Grant of a pastoral lease

101. Grant of pastoral lease, Minister's powers as to

(1) The Minister may grant a lease (a ***pastoral lease***) over any Crown lands in accordance with Part 6 and this Part.

(2) Subject to this section, if land under a pastoral lease proposed to be granted includes improvements, the grant of the lease may be subject to the payment of a sale price.

~~(3) Subsection (2) does not apply in relation to a grant or renewal of a lease offered under section 140.~~

[(3) deleted]

(4) The Minister must act under this section in consultation with the Board, which is to offer its advice on the setting of the sale

price, conditions and procedures for any of the release processes, and the evaluation of applicants under section 102.

(5) A pastoral lease must not be granted unless —

(a) the Board is satisfied that the land under the lease will be capable, when fully developed, of carrying sufficient authorised stock to enable it to be worked as an economically viable and ecologically sustainable pastoral business unit; or

(b) the lease is to be amalgamated with an adjoining pastoral lease; or

(c) the lease is to become, together with an adjoining pastoral lease or part of an adjoining pastoral lease, a pastoral business unit under section 142A, the creation of which has been approved under section 142A(1).

(6) Subsections (2) and (5) do not apply in relation to the following —

(a) a renewal or grant of a lease offered under section 140;

(b) a grant of a lease in the circumstances referred to in section 105A(1)(b).

[Section 101 amended: No. 59 of 2000 s. ~~24~~24; No. 4 of 2023 s. 46.]

102. Public offers etc. of pastoral leases to be made before grant

(1) Before granting a pastoral lease, the Minister must by advertisement in a daily newspaper circulating throughout the State~~—~~ or by any other method that is prescribed —

(a) offer the pastoral lease for sale; or

(b) invite expressions of interest in the lease; or

(c) invite tenders for the lease; or

(d) offer the lease for auction.

(1A) Subsection (1) does not apply in relation to the following —

(a) a renewal or grant of a lease offered under section 140;

(b) a grant of a lease in the circumstances referred to in section 105A(1)(b).

(2) An offer or invitation under this section may be withdrawn at any time, and another offer or invitation made at any time.

(3) An application in response to an offer or invitation under this section must be in an approved form.

[Section 102 amended: No. 4 of 2023 s. 47.]

Division 4 — Conditions of a pastoral lease

103. Terms etc. that can be included in pastoral lease

The Minister may, in consultation with the Board, include in a pastoral lease any terms, reservations, conditions, covenants or penalties not inconsistent with this Act.

104. Aboriginal people's right to enter parts of pastoral leases

Aboriginal persons may at all times enter upon any unenclosed and unimproved parts of the land under a pastoral lease to seek their sustenance in their accustomed manner.

105. Duration of pastoral lease

(1) The term of a pastoral lease- —

(a) must be specified in the grantlease; and may not

(b) cannot exceed 50 years., including any extension under section 105A(1)(a).

(2) If a pastoral lease is granted over land which has already been subjectA renewal or grant of a lease offered under section 140 in relation to a pastoral lease, the term of the new lease may not be (the ***expiring lease***) cannot be for a term greater than the term of the most recent previous lease, as expressed in thatexpiring lease; (including any extension granted in

~~particular, a pastoral~~relation to the expiring lease ~~that expires on 30 June 2015 may be renewed for a term which commences on 1 July 2015 and runs for the same length of time as the expiring lease.~~under section 105A(1)(a)).

(3) For the purposes of subsection (2), if the ~~most recent previous lease referred to in that subsection~~expiring lease was the lease resulting from an amalgamation of leases —

(a) the date of commencement of the amalgamated lease is deemed to be the date of commencement of the last to commence of the leases that were amalgamated; and

(b) the expiry date of the amalgamated lease is deemed to be the expiry date of the first to expire of the leases that were amalgamated, unless the amalgamation order specifies an earlier expiry date.

[Section 105 amended: No. 4 of 2023 s. 48.]

105A. Extension of pastoral lease or grant of pastoral lease for greater term

(1) If the term of a pastoral lease is less than 50 years, on application by the lessee the Minister may in writing —

(a) extend the term of the lease; or

(b) accept the surrender of the lease (the ***surrendered lease***) and grant under section 101 a new lease to the lessee —

(i) for a term greater than the term of the surrendered lease; and

(ii) over the whole or part of the land that was held under the surrendered lease; and

(iii) on the conditions referred to in subsection (2).

(2) For the purposes of subsection (1)(b)(iii), the new lease is to be granted —

(a) on the standard pastoral lease conditions prescribed under section 275(1)(ga) as at the date that the new lease is granted; or

(b) if no standard pastoral lease conditions are prescribed, on the same conditions as the conditions of the surrendered lease or on different conditions.

(3) The Minister must have regard to whether a pastoral lessee is a certified pastoral lessee in exercising the Minister's powers under this section.

(4) The Minister must obtain the advice of the Board before exercising the Minister's powers under this section.

(5) If the term of a pastoral lease is extended under subsection (1)(a), any sublease or other interest granted under that lease continues to have effect to the extent specified in the extension.

[Section 105A inserted: No. 4 of 2023 s. 49.]

105B. Agreements relating to extension or grant of lease under s. 105A

(1) The Minister may agree in writing with a pastoral lessee to extend the term of a lease under section 105A(1)(a), or to grant a new lease under section 105A(1)(b), subject to the lessee complying with conditions specified in the agreement.

(2) The conditions specified in the agreement may include conditions related to ensuring that the extension of the term of the lease or the grant of the new lease (as the case requires) is a valid future act under, and otherwise complies with, the *Native Title Act 1993* (Commonwealth).

(3) Subsection (4) applies if the Minister is satisfied that —

(a) the pastoral lessee has complied with the conditions specified in the agreement; and

(b) the extension of the term of the lease or the grant of the new lease (as the case requires) is a valid future act under, and otherwise complies with, the *Native Title Act 1993* (Commonwealth).

(4) The Minister must extend the term of the lease under section 105A(1)(a) or grant a new lease under section 105A(1)(b) (as the case requires), in accordance with the terms of the agreement.

[Section 105B inserted: No. 4 of 2023 s. 49.]

106. Leased land to be used for pastoral purposes unless otherwise permitted

(1) A pastoral lessee must not use land under the pastoral lease for purposes other than pastoral purposes except in accordance with a permit issued under Division 5.

Penalty~~: $10~~ for this subsection: a fine of $20 000.

(2) A pastoral lessee must not sell any product of a non-pastoral use of the land except in accordance with a permit issued under section 119, 120, 122 or 122A.

Penalty~~: $10~~ for this subsection: a fine of $20 000.

(3) An offence is not committed under subsection (1) by a pastoral lessee in respect of purposes referred to in paragraph (b) or (c) of the definition of ***pastoral purposes*** referred to in section 93 (an ***ancillary purpose***) if —

(a) a permit would otherwise be required in respect of that ancillary purpose; and

(b) a permit has been issued under Division 5; and

(c) the pastoral lessee has acted in accordance with that permit.

[Section 106 amended: No. 59 of 2000 s. ~~25~~25; No. 4 of 2023 s. 91.]

107. ~~Development plan for pastoral lease, when required etc.~~

~~(1) If the Board is of the opinion that the reasonable development of the land under the lease for pastoral purposes requires improvements to be made, it may require the lessee to submit a development plan, satisfactory to the Board, for the progressive achievement of those improvements to a specified timetable.~~

~~(2) The lessee~~Improvements must ~~make improvements to the land under the lease~~be kept in ~~accordance with any development plan approved by the Board.~~good condition

[(1), (2) deleted]

(3) ~~The~~A pastoral lessee must maintain in good condition, and if necessary restore, renew or replace, all lawful improvements to the lease, to the satisfaction of the Board.

[Section 107 amended: No. 4 of 2023 s. 50.]

108. Pastoral lessee's duties as to leased land

(1) A pastoral lessee must, to the satisfaction of the Board, at all times manage and work the land under the lease to its best advantage as a pastoral property.

(2) The lessee must use methods of best pastoral and environmental management practice, appropriate to the area where the land is situated, for the management of permitted stock and for the management, conservation and regeneration of pasture for grazing.

(3) Except with the written permission of the Board, the land under a pastoral lease must be worked as a single pastoral unit.

(4) The lessee must maintain the indigenous pasture and other vegetation on the land under the lease to the satisfaction of the Board.

(5) In satisfying itself for the purposes of subsection (4), the Board must seek and have regard to the advice and recommendations of the Commissioner on the matter.

~~(~~[(6) ~~*In subsection (2)*~~ *deleted]*

~~***stock*** means~~

~~(a) authorised stock; and~~

~~(b) stock for which a permit has been issued under section 122A.~~

[Section 108 amended: No. 59 of 2000 s. ~~26~~26; No. 4 of 2023 s. 51.]

108A. Board may direct pastoral lessee to submit management plan

(1) This section applies if the Board is satisfied that a pastoral lessee —

(a) is not managing the land under the lease, or permitted stock on that land, in accordance with this Part, in particular section 108; or

(b) has contravened any condition of the lease that relates to the use or management of land or the management of permitted stock under the lease.

(2) If this section applies, the Board may give a written direction to the lessee to submit to the Board a plan (a ***management plan***) in relation to any of the following —

(a) the improvement of the condition of land under the lease;

(b) the implementation of specified pastoral and environmental management practices;

(c) any monitoring and assessment of the condition of land under the lease the lessee is directed to undertake under section 108C(2);

(d) the control of any declared pest, in accordance with the *Biosecurity and Agriculture Management Act 2007*;

(e) the remediation and management of soil erosion;

(f) the construction, repair and maintenance of improvements;

(g) the management of permitted stock on the land.

[Section 108A inserted: No. 4 of 2023 s. 52.]

108B. Submission, approval and implementation of management plan

(1) If the Board directs a pastoral lessee under section 108A(2) to submit a management plan to the Board, the lessee must submit the management plan by the date specified in the direction.

(2) The Board may —

(a) approve the management plan; or

(b) require the lessee to make specified amendments to the management plan and resubmit it to the Board.

(3) The lessee must comply with a requirement made under subsection (2)(b).

(4) The lessee must implement the management plan approved by the Board.

(5) The lessee must submit to the Board a report on the lessee's implementation of the management plan —

(a) in the manner and within the timeframes set out in the management plan; and

(b) at other times directed by the Board.

(6) The Board may, with the agreement of the lessee, approve amendments to the management plan.

[Section 108B inserted: No. 4 of 2023 s. 52.]

108C. Board may direct pastoral lessee to monitor and report land condition

(1) This section applies if the Board is satisfied that a pastoral lessee —

(a) is not managing the land under the lease, or permitted stock on that land, in accordance with this Part, in particular section 108; or

(b) has contravened any condition of the lease that relates to the use or management of land or the management of permitted stock under the lease.

(2) If this section applies, the Board may give a written direction to the lessee —

(a) to monitor and assess the condition of land under the lease in accordance with the regulations; and

(b) to submit to the Board, on or before the date or dates in each year specified in the direction, a report relating to the condition of land under the lease that —

(i) contains the information specified in the direction; and

(ii) presents that information in the manner specified in the direction.

(3) A direction under subsection (2) may be given in conjunction with a direction under section 108A(2) or at any other time.

(4) A pastoral lessee must comply with a direction given to the lessee under subsection (2).

(5) A pastoral lessee must not, without reasonable excuse, fail to submit a report referred to in subsection (2)(b) in accordance with a direction given to the lessee under subsection (2).

Penalty for this subsection:

(a) a fine of $4 000;

(b) a daily penalty of a fine of $400 for each day or part of a day during which the offence continues.

(6) A pastoral lessee must not provide information in a report referred to in subsection (2)(b) knowing the information to be false or misleading in a material particular.

Penalty for this subsection: imprisonment for 12 months or a fine of $15 000.

[Section 108C inserted: No. 4 of 2023 s. 52.]

109. No clearing of leased land unless permitted

(1) A pastoral lessee must not remove trees or otherwise clear land under the lease or disturb or affect its soil except —

(a) as permitted under the lease; or

(b) as necessary for the construction of improvements permitted under the lease; or

(c) in accordance with a permit issued under Division 5.

Penalty~~: $10~~ for this subsection: a fine of $20 000.

(2) A pastoral lessee who contravenes subsection (1) must restore the land and vegetation to the satisfaction of the Board.

(3) If a pastoral lessee fails to satisfy the Board under subsection (2), the Board may, whether or not the lease has been forfeited, take such steps as are necessary to restore the land and vegetation.

(4) The costs of any action by the Board under subsection (3) are recoverable by the Minister from the lessee, or former lessee if the lease has been forfeited, in a court of competent jurisdiction as a debt due to the Crown.

[Section 109 amended: No. 4 of 2023 s. 91.]

110. Non-indigenous pasture not to be sown etc. on leased land without permit

(1) A pastoral lessee must not sow or cultivate non-indigenous pasture on land under the lease except in accordance with a permit issued under Division 5.

Penalty~~: $10~~ for this subsection: a fine of $20 000.

(2) A pastoral lessee must not sell fodder or other produce from non-indigenous pasture, other than the products of animals grazed on it, except in accordance with a permit issued under section 119, 120 or 122.

Penalty~~: $10~~ for this subsection: a fine of $20 000.

[Section 110 amended: No. 4 of 2023 s. 91.]

111. ~~Stock numbers etc.~~Pests and ~~pests etc.~~ prohibited stock on leased land

~~(1) The Board may from time to time determine the minimum and maximum numbers and the distribution of stock to be carried on land under a pastoral lease, based on its assessment of the sustainable carrying capacity of the land and having regard to seasonal factors, and the pastoral lessee must comply with such a determination.~~

~~(2) A pastoral lessee must not cause or allow the agistment on land of stock of any kind, except with the permission in writing of the Board.~~

~~Penalty: $5 000, and a daily penalty of $500.~~

[(1), (2) deleted]

(3) A pastoral lessee must control declared pests on the land under the lease in compliance with the *Biosecurity and Agriculture Management Act 2007* and to the satisfaction of the Board.

(4) A pastoral lessee must not —

(a) keep prohibited stock on land under a pastoral lease; or

(b) sell prohibited stock,

except in accordance with a permit to do so issued under Division 5.

Penalty~~: $10 000.~~

~~(5) If stock being kept on a pastoral lease by a pastoral lessee on the commencement day is prohibited stock,~~ for this subsection ~~(4) does not apply to that person until~~ : a fine of $20 000.

[(5) deleted]

(6 ~~months after the commencement day.~~

~~(6~~) If authorised stock being kept on a pastoral lease by a pastoral lessee becomes prohibited stock ~~after the commencement day~~, subsection (4) does not apply to that person until 6 months after the day on which the authorised stock became prohibited stock or such other period as may be prescribed but which period is not to be less than one month.

~~(~~[(7~~) In subsection (1)~~

~~***stock*** means~~

~~(a) authorised stock; and~~

~~(b) stock for which a permit has been issued under section 122A.~~

~~-~~), *(8)* ~~*In subsections (5) and (6)*~~ *deleted]*

~~***commencement day*** means the day on which section 27 of the *Land Administration Amendment Act 2000* comes into operation.~~

[Section 111 amended: No. 59 of 2000 s. 27; No. 24 of 2007 s. 90(2~~).]~~

~~*112. Soil conservation notice, effect of on*~~ *); No. 4 of 2023 s.* ~~*111 determination etc.*~~*53 and 91.]*

111A. Board may make determinations and directions as to number and distribution of stock

(1) The Board may from time to time determine the minimum and maximum numbers and the distribution of permitted stock to be carried on land under a pastoral lease.

(2) The Board must give the pastoral lessee written notice of a determination under subsection (1).

(3) The Board may give a written direction to a pastoral lessee to remove a specified number of permitted stock from land under the pastoral lease by the day specified in the direction.

(4) A determination under subsection (1) or direction under subsection (3) must be based on the Board's assessment of the sustainable carrying capacity of the land and have regard to seasonal factors.

(5) Unless section 112(1) applies, a pastoral lessee must comply with —

(a) a determination notice of which is given to the lessee under subsection (2); and

(b) a direction given to the lessee under subsection (3).

[Section 111A inserted: No. 4 of 2023 s. 54.]

111B. Board may require evidence of compliance with s. 111A

(1) The Board may give a written direction to a pastoral lessee to provide, by the day specified in the direction, any evidence of the lessee's compliance with section 111A(5) that is specified in the direction.

(2) A pastoral lessee must not, without reasonable excuse, fail to comply with a direction given to the lessee under subsection (1).

Penalty for this subsection:

(a) a fine of $4 000;

(b) a daily penalty of a fine of $400 for each day or part of a day during which the offence continues.

(3) A pastoral lessee must not provide information in accordance with a direction given to the lessee under subsection (1) knowing the information to be false or misleading in a material particular.

Penalty for this subsection: imprisonment for 12 months or a fine of $15 000.

[Section 111B inserted: No. 4 of 2023 s. 54.]

112. Effect of soil conservation notice on determinations and directions under s. 111A and permits under Div. 5

(1) If a soil conservation notice is issued as to the numbers or distribution of permitted stock on land under a pastoral lease, the notice has the effect~~,~~ while it is in force~~,~~ of suspending ~~any determination under section 111 and the operation of any permit issued under Division 5~~the following to the extent of any inconsistency —

(a) a determination notice of which is given to the lessee under section 111A(2);

(b) a direction given to the lessee under section 111A(3);

(c) the operation of a permit issued under Division 5.

(2) The issue of a soil conservation notice in relation to land under a pastoral lease does not release a pastoral lessee from the obligation to control declared pests on the land under section 111(3).

~~(~~*[(3)* ~~*If the*~~*deleted]*

[Section 112 amended: No. 59 of 2000 s. 28; No. 24 of 2007 s. 90(3); No. 4 of 2023 s. 55.]

112A. Effect on rent if reduction in stock numbers

(1) This section applies if the numbers of permitted stock to be carried on land under a pastoral lease are reduced- —

(a) by a soil conservation notice; or

(b) by a ~~variation in a~~ determination notice of which is given to the ~~Board~~lessee under section ~~111, the~~ 111A(2); or

(c) by a direction given to the lessee under section 111A(3); or

(d) in accordance with a management plan approved under section 108B.

(2) The Minister, on the advice of the Board, may reduce the rent for the pastoral lease in proportion to the reduction in permitted stock.

[Section ~~112 amended~~112A inserted: No. ~~59~~4 of ~~2000~~2023 s. ~~28; No. 24 of 2007 s. 90(3).]~~56.]

113. ~~Annual~~Pastoral lessee to submit annual return ~~by lessee required~~

(1) In this section —

due date means —

(a) 31 March; or

(b) if the regulations prescribe a different date, that date;

return end date means —

(a) 31 December; or

(b) if the regulations prescribe a different date, that date;

return period, for a pastoral lease, means —

(a) 12 months ending on the return end date; or

(b) if the lease is granted in that period, the period commencing on the date the lease is granted and ending on the return end date; or

(c) if the regulations prescribe a different period, that period.

(2) A pastoral lessee must, ~~after 30 June~~on or before the due date in each year~~ (the ***return date***) and not later than 31 December in that year~~, submit to the Board a return that relates to the land under the lease, and the activities on the land, during the preceding return period.

Penalty for this subsection:

(a) a fine of $4 000;

(b) a daily penalty of a fine of $400 for each day or part of a day during which the offence continues.

(3) The return must be in an approved form ~~of any~~ and contain the following information~~ required by the Board relating to the land under the lease or the activities on the land.~~ —

~~(2) The return is to include —~~

(a) ~~information as to~~permitted stock numbers on the return end date;~~ and~~

(b) full particulars, including costs, of all improvements effected on the land under the lease in the ~~period of 12 months before the return date, or, if the lease was granted during that period, between the commencement of the lease and the return date; and~~return period;

(c) full particulars of the use, in the return period, of each area of land affected by a permit issued under Division 5~~.~~;

~~Penalty: $2 000 and a daily penalty of $200.~~

~~(3~~ (d) any other information the form requires.

(4) A pastoral lessee must not~~—~~

~~(a) knowingly provide false information; or~~

~~(b)~~ , without reasonable excuse, fail to provide in a return any information required~~,~~ under subsection (3).

~~in a return under this section.~~

~~Penalty: $8 000 or~~ Penalty for this subsection: a fine of $4 000.

(5) A pastoral lessee must not provide information in a return knowing the information to be false or misleading in a material particular.

Penalty for this subsection: imprisonment for 12 months or a fine of $15 000.

~~(4) In subsection (2)~~

~~***stock*** means~~

~~(a) authorised stock; and~~

~~(b) stock for which a permit has been issued under section 122A.~~

[Section 113 ~~amended~~inserted: No. ~~59~~4 of ~~2000~~2023 s. ~~29~~56.]

114. Compensation for improvements payable on expiry of certain leases

(1) In this section —

continuing lease means a pastoral lease that —

(a) was granted before the appointed day; or

(b) is a continuation, by means of a renewal or grant effected under —

(i) section 140 of this Act; or

(ii) section 98(11) of the repealed Act as read with section 143 of this Act,

of a pastoral lease that was granted before the appointed day.

(2) If a continuing lease expires and is not further continued, the lessee is entitled to receive from the Minister as compensation an amount determined by the Valuer-General to be the market

value on the date of expiry of any lawful improvements existing on the land under the lease.

(3) If a continuing lease expires and is continued by the grant of a lease, offered under section 140 of this Act or under section 98(11) of the repealed Act as read with section 143 of this Act, over part only of the land, subsection (2) applies in relation to improvements existing on the land not under the newly granted lease.

(4) If a pastoral lease other than a continuing lease expires, the lessee is not entitled to any compensation for improvements.

(4a) Despite subsection (4) and section 143(5a) or (6c) —

(a) if the Minister is not satisfied that the land subsisting in a lease is capable, when fully developed, of carrying sufficient authorised stock to enable it to be worked as an economically viable and ecologically sustainable pastoral business unit; and

(b) the land subsisting in the lease is a part only of the land that was in the lease when it was granted; and

(c) the lease is not to be amalgamated with an adjoining pastoral lease; and

(d) the lease is not to become, together with an adjoining pastoral lease or part of an adjoining pastoral lease, a pastoral business unit,

the Minister may by order cancel a grant or extension of a lease in relation to that land that is to commence immediately upon the expiration of the lease concerned, and the lessee is entitled to receive from the Minister as compensation an amount determined by the Valuer-General to be the market value on the date of cancellation of any lawful improvements existing on the land subsisting under the lease.

(5) If a pastoral lease is forfeited under this Act, the lessee is entitled to remove such improvements made —

(a) during the term of the lease; or

(b) in the case of a continuing lease, since the commencement of the original lease,

as are of a kind easily capable of being removed.

(6) Compensation under this section is to be paid out of moneys appropriated by Parliament for the purpose.

[Section 114 amended: No. 59 of 2000 s. 30.]

Division 5 — Permits

115. Fees for permits

(1) The regulations may prescribe fees to be charged for the issue, renewal, transfer and amendment of a permit under this Division.

(2) A fee under this section is not part of the rent for the lease.

[Section 115 amended: No. 4 of 2023 s. 57.]

116. Permit may be issued despite lease's terms

A permit under this Division authorises the activity specified in the permit, despite any provision to the contrary contained in a lease granted under the repealed Act.

117. Environmental conservation requirements to be ~~satisfied before permit can be issued~~complied with

The Board must not issue a permit under this Division unless ~~it~~ —

(a) the Board is satisfied that any requirements that apply under the following written laws in relation to the ~~proposal arising from the operation of~~ activity

proposed to be carried out under the permit have been complied with —

(~~a~~i) the *Biodiversity Conservation Act 2016*;

(ii) the *Biosecurity and Agriculture Management Act 2007*; ~~or~~

(~~b~~iii) the *Environmental Protection Act 1986*; ~~or~~

(~~c~~iv) the *Soil and Land Conservation Act 1945*; ~~or~~

~~(d) the *Biodiversity Conservation Act 2016*; or~~

~~(e~~ (v) any other written law relating to environmental conservation ~~which~~that is applicable to the land under the lease~~,~~;

~~have been~~or

(b) the permit is subject to a condition that any requirements that apply under the written laws referred to in paragraph (a) will be complied with before any activity is carried out under the permit.

[Section 117 amended: No. 24 of 2007 s. 90(4); No. 24 of 2016 s. (2)(a~~).]~~); No. 4 of 2023 s. 58.]

118. Clearing land, permit for

(1) The Board may, on an application in writing from a pastoral lessee, issue a permit for the lessee to remove specified trees or clear specified areas of scrub or other vegetation for the purpose of promoting the growth of indigenous pasture or otherwise facilitating or improving the working of the lease.

(2) The Board must consult the Commissioner before issuing a permit under this section.

(3) A permit under this section may be issued for any period and subject to any conditions the Board thinks fit.

119. Non-indigenous pastures, permit to sow etc.

(1) The Board may, on an application in writing from a pastoral lessee, issue a permit for the lessee to sow and cultivate non-indigenous pasture on specified land under the lease.

(2) An application must specify the varieties of non-indigenous pasture proposed and the areas of land proposed to be sown or cultivated.

(3) A permit under this section —

(a) may include a permit for the sale of any produce of the pasture permitted; and

(b) may be issued for any period and subject to any conditions the Board thinks fit.

120. Non-pastoral agricultural activity, permit for

(1) The Board may, on an application in writing from a pastoral lessee, issue a permit for the lessee to use specified land under the lease for crop, fodder, horticultural or other specified kind of agricultural production if it is satisfied that the proposed use is reasonably related to the pastoral use of the land.

(2) An application must specify the non-pastoral activity proposed and the areas of land proposed to be used for the activity.

(3) A permit under this section —

(a) may include a permit for the sale of any produce arising from an activity permitted; and

(b) may be issued for any period and subject to any conditions the Board thinks fit.

121. Tourist activity, permit for

(1) The Board may, on an application from a pastoral lessee, issue a permit for the lessee to use specified land under the lease for pastoral-based tourist activities of a specified kind, if it is

satisfied that the activities will be purely supplementary to pastoral activities on the land.

(2) An application must specify the tourist activity proposed, any facility proposed to be constructed, and the areas of land proposed to be used.

(3) A permit under this section may be issued for any period and subject to any conditions the Board thinks fit.

122. Non-pastoral use etc. of enclosed or improved land, permit for

(1) The Board may, on the application of a pastoral lessee, issue a permit for the lessee to use specified land under the lease for any non-pastoral purposes if the land has been enclosed or improved.

(2) An application must specify the use proposed, any facility proposed to be constructed, and the areas of land proposed to be used.

(3) A permit under this section —

(a) may include a permit for the sale of any produce arising from an activity permitted; and

(b) may be issued for any period and subject to any conditions the Board thinks fit.

122A. Prohibited stock, permit to keep etc.

(1) The Board may, on an application in writing from a pastoral lessee, issue a permit for the lessee to do either or both of the following —

(a) keep prohibited stock on land under a pastoral lease;

(b) sell prohibited stock.

(2) A permit under this section —

(a) may include a permit for the sale of any produce arising from an activity permitted; and

(b) may be issued for any period and subject to any conditions the Board thinks fit.

[Section 122A inserted: No. 59 of 2000 s. 31.]

122B. Board's power to amend permit

The Board may, with the consent of the permit holder, amend the terms and conditions of a permit issued under this Division.

[Section 122B inserted: No. 4 of 2023 s. 59.]

122C. Renewal of permit

(1) The holder of a permit (the ***expiring permit***) under this Division may apply in writing to the Board for the expiring permit to be renewed.

(2) An application under subsection (1) must be made not more than 12 months, and not less than 6 months, before the expiry of the expiring permit.

(3) The Board may renew the expiring permit —

(a) for the same period as the period of the expiring permit or a different period; and

(b) on the same conditions as the conditions of the expiring permit or on different conditions.

[Section 122C inserted: No. 4 of 2023 s. 59.]

122D. Suspension of permit

(1) The Board may suspend a permit issued under this Division if the Board is satisfied that —

(a) there has been a breach of a condition to which the permit is subject; or

(b) information contained in, or provided in support of, the application for the permit was false or misleading in a material particular.

(2) Before suspending a permit, the Board must —

(a) give written notice to the permit holder of the grounds on which the Board intends to suspend the permit; and

(b) give the permit holder a reasonable opportunity to provide any information that the permit holder thinks is relevant to the decision to suspend the permit.

(3) The Board must give a permit holder written notice of the following —

(a) the Board's decision to suspend, or not suspend, the permit;

(b) if the permit is to be suspended —

(i) the day on which the suspension takes effect and the period of the suspension;

(ii) any conditions of the permit that the permit holder must continue to comply with during the period of the suspension;

(iii) any action that the permit holder must take in order for the suspension to be lifted.

(4) The Board may lift the suspension of a permit by notice in writing given to the permit holder.

(5) The Board may extend the period of the suspension of a permit by notice in writing given to the permit holder.

(6) The suspension of a permit does not affect the application or operation of section 125 in relation to the permit holder.

(7) The permit holder must comply with a notice under subsection (3) to the extent that it is given under subsection (3)(b)(ii).

[Section 122D inserted: No. 4 of 2023 s. 59.]

122E. Cancellation of permit

(1) The Board may cancel a permit issued under this Division if the Board is satisfied that —

(a) there has been a breach of a condition to which the permit is subject (including a condition mentioned in section 122D(3)(b)(ii)); or

(b) information contained in, or provided in support of, the application for the permit was false or misleading in a material particular.

(2) Before cancelling a permit, the Board must —

(a) give written notice to the permit holder of the grounds on which the Board intends to cancel the permit; and

(b) give the permit holder a reasonable opportunity to provide any information that the permit holder thinks is relevant to the decision to cancel the permit.

(3) The Board must give a permit holder written notice of the following —

(a) the Board's decision to cancel, or not cancel, the permit;

(b) if the permit is to be cancelled — the day on which the cancellation takes effect.

(4) If a permit is cancelled under this section, the amount of rent payable for the lease must be adjusted in accordance with Division 6.

[Section 122E inserted: No. 4 of 2023 s. 59.]

122F. Permit not personal property for *Personal Property Securities Act 2009* (Commonwealth)

If a permit issued under this Division is transferable by the permit holder, in accordance with paragraph (d) of the definition of ***licence*** in the *Personal Property Securities Act 2009* (Commonwealth) section 10, the permit is declared not to be personal property for the purposes of that Act.

[Section 122F inserted: No. 4 of 2023 s. 59.]

Division 6 — Rent for a pastoral lease

~~**123. Annual rent, determining**~~

122G. Terms used

In this Division —

commencement day means the day on which the *Land and Public Works Legislation Amendment Act 2023* section 60 comes into operation;

corresponding quarter, in relation to a determination under section 122H(1) or 122I(2), means the quarter in the calendar year immediately preceding the calendar year in which the determination is made that corresponds to the previous quarter;

CPI number means the Consumer Price Index, All Groups index number for Perth published by the Australian Bureau of Statistics established by the *Australian Bureau of Statistics Act 1975* (Commonwealth) section 5(1);

first CPI determination day means —

(a) if commencement day is on or before 31 December 2023 — 31 December 2023; or

(b) otherwise — 31 December next following commencement day;

permit rent, in relation to a pastoral lease, has the meaning given in section 124(1);

previous quarter, in relation to a determination under section 122H(1) or 122I(2), means the most recent quarter ending before the determination is made for which a CPI number is available;

previous Valuer-General determination date means —

(a) in relation to a determination under section 123A(2) or 123B(1) made on or before 31 December 2028 — 1 July in the most recent calendar year in which the

Valuer-General determined rents under section 123(4) (as in force immediately before commencement day); or

(b) in relation to a determination under section 123A(2) or 123B(1) made after 31 December 2028 — 1 July in the most recent rent review year before the calendar year in which the determination is made;

rent review year means —

(a) 2028; or

(b) every 10th calendar year after that year.

[Section 122G inserted: No. 4 of 2023 s. 60.]

122H. Minister to determine annual rent

(1) Subject to subsection (2) and section 124A(5), on the first CPI determination day and on each 31 December after that day the Minister must determine in accordance with subsection (3) the annual rent payable for each pastoral lease.

(2) The Minister must not make a determination under subsection (1) —

(a) in a rent review year; or

(b) in respect of a lease in a calendar year in which the Valuer-General makes a determination under section 123A(2) in respect of the lease.

(3) For the purposes of subsection (1), the annual rent payable for a pastoral lease must be determined using the following formula —

$$AR = B \times \left(\frac{CPI_r}{CPI_{r-4}}\right)$$

where —

AR is the annual rent;

B is the base annual rent as referred to in subsection (4);

CPI_r is the CPI number for the previous quarter;

CPI_{r-4} is the CPI number for the corresponding quarter.

(4) For the purposes of subsection (3), the base annual rent is —

(a) for a determination made on the first CPI determination day, the lower of the following amounts —

(i) the annual rent for the pastoral lease that applies immediately before the determination is made;

(ii) the average of the annual rents for the pastoral lease determined by the Valuer-General under section 123(4) (as in force immediately before commencement day) as at 1 July 1999 and as at the 1 July of each 5th year after that date;

and

(b) for any other determination — the annual rent for the pastoral lease that applies immediately before the determination is made.

(5) A determination under subsection (1) of the annual rent payable for a pastoral lease —

(a) unless subsection (6) applies, comes into effect on 1 July next following the making of the determination; and

(b) applies to the lease until a new determination under subsection (1) or section 123(1)(a) or 123A(4)(b) comes into effect in respect of the lease.

(6) A determination under subsection (1) of the annual rent payable for a pastoral lease does not come into effect under subsection (5)(a) if, in the period between the making of the determination and 1 July next following, a determination under section 123A(4)(b) comes into effect in respect of the lease.

(7) Subsection (5) is subject to sections ~~124A~~112A(2), 127, 134(8), 141(3) and 254.

(8) A reference in this section to the annual rent for a pastoral lease does not include any permit rent determined in respect of the lease by the Minister under section 122I(2) or by the Valuer-General under section 124~~,~~(3) (whether before, on or after commencement day).

[Section 122H inserted: No. 4 of 2023 s. 60.]

122I. Minister to determine permit rent if pastoral lease subject to permit

(1) This section applies if a pastoral lessee is the holder of a permit issued under Division 5 that is subject to a condition of the kind referred to in section 124(1) (whether that condition was imposed before, on or after commencement day).

(2) Subject to subsection (3), on the first CPI determination day and on each 31 December after that day the Minister must determine in accordance with subsection (4) the permit rent payable in respect of the lease.

(3) The Minister must not make a determination under subsection (2) in respect of the lease in a calendar year in which the Valuer-General makes a determination under section 124(3) in respect of the lease.

(4) For the purposes of subsection (2), the permit rent payable in respect of the lease must be determined using the following formula —

$$PR = B \times \left(\frac{CPI_r}{CPI_{r-4}}\right)$$

where —

PR is the permit rent;

B is the permit rent that applies immediately before the determination is made;

CPI_r is the CPI number for the previous quarter;

CPI_{r-4} is the CPI number for the corresponding quarter.

(5) A determination under subsection (2) of the permit rent payable in respect of a pastoral lease —

(a) unless subsection (6) applies, comes into effect on 1 July next following the making of the determination; and

(b) applies in addition to, and does not affect, a determination under section 122H(1), 123(1)(a), 123A(4)(b) or 123B(3)(b); and

(c) applies until a new determination under subsection (2) or section 124(3) comes into effect in respect of the lease.

(6) A determination under subsection (2) of the permit rent payable in respect of a pastoral lease does not come into effect under subsection (5)(a) if, in the period between the making of the determination and 1 July next following, a determination under section 124(3) comes into effect in respect of the lease.

[Section 122I inserted: No. 4 of 2023 s. 60.]

123. Valuer-General to determine annual rent at 10 yearly intervals

(1) In each rent review year, the Valuer-General must —

(a) determine the annual rent payable for each pastoral lease in accordance with subsection (2); and

(b) on or before 31 December (the ***determination day***) in that year give the determination to the Minister.

(2) For the purposes of subsection (1)(a), the annual rent payable for a pastoral lease is the amount~~, as determined by the Valuer-General,~~ of ground rent that, as at 1 July in the rent review year, the land might reasonably be expected to ~~realize~~realise in good condition~~,~~ for a long~~-~~-term lease for pastoral purposes under which all normal outgoings are paid by the lessee.

(3) A determination under subsection (1)(a) of the annual rent payable for a pastoral lease —

(a) comes into effect on 1 July next following the determination day; and

(b) applies until a new determination under section 122H(1) or 123A(4)(b) comes into effect in respect of the lease.

(4) Subsection (3) is subject to sections 112A(2), 124A, 127, 134(8), 141(3) and 254.

(5) In determining the annual rent payable for a pastoral lease~~,~~ under subsection (1)(a), the Valuer-General ~~is to~~must consult the Board ~~concerning~~about the economic state of the pastoral industry.

~~(3)~~ *[Section 123 inserted: No. 4 of 2023 s. 60.]*

123A. Minister may request Valuer-General to make interim determination of annual rent

(1) The Minister may, at any time, request the Valuer-General to make a determination under this section in relation to a pastoral lease if the Minister is satisfied that it is necessary or expedient to do so because of —

(a) a change in the area of the land under the lease since the annual rent for the lease was last determined under this Division; or

(b) any other change in relation to the lease, since the annual rent for the lease was last determined under this Division, that the Minister considers may materially affect that determination.

(2) If the Minister makes a request under subsection (1) in relation to a pastoral lease, the Valuer-General must in accordance with subsection (3) determine ~~the~~a rent for ~~a~~the lease ~~proposed to be issued if no valuation in relation to~~.

(3) For the ~~land under~~purposes of subsection (2), the rent for the lease ~~has been made under this section within~~is the amount of ground rent that, as at the previous ~~5 years~~Valuer-General determination date, the land might reasonably be expected to realise in good condition for a long-term lease for pastoral purposes under which all normal outgoings are paid by the lessee.

(4) ~~The~~After the Valuer-General determines a rent for the lease under subsection (2), the Minister must~~-~~ —

(a) adjust the rent in accordance with the regulations to take into account changes in CPI numbers since the previous Valuer-General determination date; and

(b) determine ~~rents of all pastoral leases as at 1 July 1999, and as at the 1 July of each fifth year thereafter~~that the rent so adjusted is the annual rent payable for the lease.

(5) A determination under subsection (4~~) applies from the date~~)(b) of the annual rent payable for a pastoral lease —

(a) comes into effect on a day determined by the Minister, which cannot be a day that is earlier than the day on which the change referred to in ~~that~~ subsection (1)(a) or (b) (as the case requires) took effect; and

(b) applies until a new ~~valuation is made~~determination under ~~this~~subsection (4)(b), section ~~or~~ 122H(1) or 123(1)(a) comes into effect in respect of the lease.

(6) Subsection (5) is subject to sections 112A(2), 127, 134(8), 141(3) and 254.

[Section 123A inserted: No. 4 of 2023 s. 60.]

123B. Determining annual rent when new pastoral lease granted

(1) If the Minister proposes to grant a pastoral lease under section ~~124~~101, the Valuer-General must in accordance with subsection (2) determine a rent for the lease.

(2) For the purposes of subsection (1), the rent for the lease is the amount of ground rent that, as at the previous Valuer-General determination date, the land might reasonably be expected to realise in good condition for a long-term lease for pastoral purposes under which all normal outgoings are paid by the lessee.

(3) After the Valuer-General determines a rent for the lease under subsection (1), the Minister must —

(a) adjust the rent in accordance with the regulations to take into account changes in CPI numbers since the previous Valuer-General determination date; and

(b) determine that the rent so adjusted is the annual rent payable for the lease.

(4) A determination under subsection (3)(b) of the annual rent payable for a pastoral lease —

(a) comes into effect on the day on which the lease is granted; and

(b) applies until a new determination under section 122H(1), 123(1)(a) or 123A(4)(b) comes into effect in respect of the lease.

(5) Subsection (4) is subject to sections 112A(2), 127, 134(8), 141(3) and 254.

[Section ~~123 amended~~ 123B inserted: No. ~~32~~ 4 of ~~2009~~2023 s. ~~4~~60.]

124A. Phasing in increases to rent due to s. 123 determination

(1) In this section —

annual rent, for a pastoral lease, ~~includes~~means the annual rent determined ~~under section 123 for the purposes of section 124(1)(a);~~

~~***determination*** means a determination~~ by the Valuer-General under section 123~~;~~(1)(a);

determined annual rent means the annual rent for a pastoral lease that may be phased in by regulations made for the purposes of subsection (2).

(2) The regulations may provide for the phasing in of the annual rent for a pastoral lease that, as the result of a determination~~,~~ by the Valuer-General under section 123(1)(a), is greater than the annual rent for the lease that applied immediately before the Valuer-General's determination came into effect.

(3) Regulations made for the purposes of subsection (2) may provide that the annual rent payable for the pastoral lease is, instead of the determined annual rent, an amount —

(a) that is less than the determined annual rent; and

(b) that is calculated as set out in the regulations.

(4) Regulations made for the purposes of subsection (2) must have the effect that, within a period (the ***phase-in period***) not greater than ~~3~~5 years after the day on which the determination by the Valuer-General under section 123(1)(a) comes into effect in respect of the pastoral lease, the annual rent payable for the pastoral lease is an amount equal to the determined annual rent adjusted in accordance with the regulations to take into account changes in CPI numbers during the phase-in period.

(5) ~~Regulations made for the purposes of subsection (2) in relation to~~ The Minister must not make a determination ~~as at 1 July 2009 may be expressed to have effect from that day despite that day being earlier than —~~

~~(a) the day on which the regulations are published in the *Gazette*; or~~

~~(b) the day on which the *Land Administration Amendment Act 2009*~~ under section ~~5 comes into operation~~122H(1) in respect of the pastoral lease during the phase-in period.

[Section~~-~~ 124A inserted: No. 32 of 2009 s. ~~5~~5; amended: No. 4 of 2023 s. 61.]

124. Annual rent if permit issued

(1) The Board may make it a condition of a permit issued under Division 5 that the annual rent payable for the ~~lease~~pastoral lease in respect of which the permit is ~~to be the sum of —~~

~~(a) a~~issued includes an additional rent (the ***permit rent***), determined by the Valuer-General under subsection (3) or the Minister under section 122I(2), in relation to that part of the land under the lease ~~which~~that is ~~not affected by the permit, determined by the Valuer-General; and~~

~~(b) a rent in relation to that part of the land under the lease which is affected by the permit, determined by the Valuer-General.~~

~~(2) The Valuer-General must determine rents for the purposes of subsection (1)(a) in accordance with section 123 as if the leases concerned applied only to the land not~~ affected by the permit.

[(2) deleted]

(3) The Valuer-General must determine ~~a~~the permit rent for the purposes of subsection (1~~)(b~~) at times requested by the Minister.

(4) Determinations under subsection (3) must be made in respect of each lease concerned at intervals of not less than one year and not more than 5 years.

(5) A determination under subsection (3)~~ applies from~~ —

(a) comes into effect on the ~~date~~day on which the pastoral lessee is notified of the determination~~.~~; and

(b) applies in addition to, and does not affect, a determination under section 122H(1), 123(1)(a), 123A(4)(b) or 123B(3)(b); and

(c) applies until a new determination under subsection (3) or section 122I(2) comes into effect in respect of the lease.

[Section 124 amended: No. 4 of 2023 s. 62.]

125. Payment of rent

(1A) In this section —

previous determination —

(a) in relation to a determination by the Valuer-General under section 123(1)(a) of the annual rent, or under section 123A(2) of a rent, for a pastoral lease — means the most recent previous determination of annual rent for the lease under this Division; and

(b) in relation to a determination by the Valuer-General under section 124(3) of the permit rent for a pastoral lease — means the most recent previous determination of the permit rent for the lease under this Division.

(1) A pastoral lessee must pay the ~~assessed~~ rent determined under this Division for a pastoral lease in accordance with the lease and, if the lessee is the holder of a permit issued under Division 5 that is subject to a condition of the kind referred to in section 124(1), the permit.

(2) If an objection has been lodged against ~~an assessment of rent~~a determination by the Valuer-General under section 123(1)(a) of the annual rent, under section 123A(2) of a rent, or under section 124(3) of the permit rent, for a pastoral lease or a notice has been given requiring the ~~assessment~~determination to be referred to the State Administrative Tribunal for a review, but the matter has not been determined at a date on which an instalment of rent becomes due, the rent is payable at the rate of the previous ~~assessment~~determination.

(3) If ~~an assessment~~a determination by the Valuer-General under section 123(1)(a) of the annual rent, under section 123A(2) of a rent, or under section 124(3) of the permit rent, for a pastoral lease is amended as a result of an objection or review and the pastoral lessee has paid an amount of rent at the previous rate under subsection (2), the lessee is entitled to set off any overpayment against the future rental payments.

(4) If a pastoral lessee fails to pay rent on the due date, interest becomes payable in respect of the amount and accrues at the prescribed rate.

[Section 125 amended: No. 55 of 2004 s. 545; No. 4 of 2023 s. 63.]

126. Objections to and review of ~~annual~~ rent or value of improvements

For the purposes of objections and review in relation to —

(a) ~~an assessment~~a determination by the Valuer-General under section 123(1)(a) of the annual rent, under section 123A(2) of a rent, or under section 124(3) of the permit rent, for a pastoral lease; or

(b) a determination of the value of improvements under section 114,

Part IV of the *Valuation of Land Act 1978* applies, with any necessary modifications, as if the ~~assessment or~~ determination were a valuation made under that Act, and the Minister were the person required to be informed under section 34 of that Act.

[Section 126 amended: No. 55 of 2004 s. 546; No. 4 of 2023 s. 64.]

127. Amalgamated leases, rent for

If 2 or more pastoral leases are amalgamated, the rental determination for the amalgamated lease is deemed to be the sum of the current determinations for each of the leases amalgamated.

128. ~~Postponing or reducing~~ Payment of rent ~~if drought, financial hardship etc.~~may be delayed, reduced or waived in certain cases

(1) The Minister may~~, on the recommendation of the Board under this section,~~ allow a payment of rent ~~for a pastoral lease~~under

this Division to be delayed for a specified period, reduced or waived entirely. —

(2) A lessee

((a) to take into account the occurrence of a) whose lease has been adversely affected by drought, fire, cyclone, flood or other disaster that affects the land under 1 or more pastoral leases; or

(b) who is suffering personal financial hardship as a result ofto take into account poor economic conditions in the pastoral industry,; or

(c) in prescribed circumstances.

(2) The Minister may exercise the power under subsection (1) —

(a) on the recommendation of the Board under subsection (5) following an application by the lessee under subsection (4) — in respect of a particular pastoral lease; or

(b) on the Minister's own initiative or on the recommendation of the Board — in respect of all pastoral leases or pastoral leases of a particular class.

(3) Before exercising the power under subsection (1) on the Minister's own initiative, the Minister must consult the Board.

(4) A pastoral lessee may apply to the Board for a delay, reduction or waiver of a payment of rent relief under this section.subsection (1).

(3) The5) If the Board, if it is satisfied the requestthat the pastoral lessee's application is reasonable in the circumstances, is to the Board must recommend to the Minister rent relief which ita delay, reduction or waiver that the Board considers appropriate.

(4) The (6) If a pastoral lessee applies under subsection (4) for a delay, reduction or waiver of a payment of rent, the Board may require the lessee to provide suchany of the following that

the Board thinks necessary for proper consideration of the application —

(a) if the application relates to the occurrence of a disaster referred to in subsection (1)(a) — evidence of the disaster~~,~~ and its effect on the land under the pastoral lease and the lessee's financial circumstances~~ as it thinks necessary~~;

(b) if the application relates to ~~make a decision, and~~the economic conditions referred to in ~~particular~~subsection (1)(b) — evidence of the effect of those conditions on the lessee's financial circumstances.

(7) For the purposes of subsection (6), the Board may —

(a) require the production of audited or otherwise duly authenticated accounts and any other records of relevant operations and transactions; or

(b) require the lessee, or ~~his or her~~an agent of the lessee, to verify ~~such~~the evidence by statutory declaration~~; or~~.

~~(c) require the lessee, or his or her agent, to attend at a meeting or meetings of the Board to be examined on oath.~~

~~(5) For the purposes of subsection (4)(c), the Board may examine witnesses on oath, and such an oath may be administered by any member of the Board.~~

[Section 128 inserted: No. 4 of 2023 s. 65.]

Division 7 — Defaults, offences, forfeiture and abandoned leases

128A. Board may direct pastoral lessee

(1) The Board may give a written direction to a pastoral lessee to comply with 1 or more of the following —

(a) a provision of this Part;

(b) a provision of the lease;

(c) a condition of a permit issued under Division 5 in respect of the lease (including a condition mentioned in section 122D(3)(b)(ii)).

(2) The direction may require the lessee —

(a) to do a thing in relation to any land under the lease, in the manner, and by the date, specified in the direction; or

(b) to refrain from doing a thing in relation to any land under the lease.

(3) A pastoral lessee must comply with a direction given to the lessee under subsection (1).

(4) A pastoral lessee must give the Board any information the Board requires in order to be satisfied that the lessee has complied with the direction.

[Section 128A inserted: No. 4 of 2023 s. 66.]

129. Default notice, when can be issued etc.

(1) If a pastoral lessee fails to comply with —

(a) any provision of this Act; or

(b) any provision of the lease; or

(c) any condition set ~~or~~, determination made, or direction given by the Board under this Part; or

(ca) a condition of a permit issued under Division 5 in respect of the lease~~;~~ (including a condition mentioned in section 122D(3)(b)(ii)); or

(d) a soil conservation notice,

the Board may issue a default notice in accordance with this section, and the lessee must comply with the notice.

(2) A default notice issued under subsection (1) must —

(a) ~~specify~~give details of the ~~provision, condition, determination or notice with which the lessee has failed~~failure to comply; and

(b) if the notice relates to a failure to comply with a provision of this Act or the lease~~ which specifies~~, or a condition of a permit, that ~~anything is~~requires something to be done to the satisfaction of the Board~~,~~ — specify ~~the actions which~~any action that the Board requires the lessee to take in order for the Board to ~~satisfy it~~be satisfied; and

~~(c) require the lessee to comply forthwith; and~~

[(c) deleted]

(d) specify any action which the Board requires the lessee to take to remedy the effects of the failure to comply; and

(e) specify a time or times by which any actions required under paragraph (b) or (d) ~~are to~~must be done; and

(f) inform the lessee that a failure to comply with the default notice could result in a fine, the forfeiture of the lessee's interest in the lease, or both.

[Section 129 amended: No. 59 of 2000 s. ~~32~~32; No. 4 of 2023 s. 67.]

130. Not complying with default notice, offence

If a default notice is issued under section 129(1)(a), (b), (c) or (ca), a pastoral lessee who fails to comply with the default notice commits an offence.

Penalty: ~~$50~~

(a) a fine of $90 000~~, and~~ ;

(b) a daily penalty of ~~$1~~a fine of $2 000 for each day or part of a day during which the offence continues.

[Section 130 inserted: No. 59 of 2000 s. ~~33~~33; amended: No. 4 of 2023 s. 91.]

131. Forfeiture, when lease is liable to

If the Minister is satisfied that a pastoral lessee has failed to comply with —

(a) a provision of this Act; or

(b) a provision of the lease; or

(c) a condition set ~~or~~, determination made, or direction given by the Board under this Part; or

(d) a condition of a permit issued under Division 5 in respect of the lease~~,~~ (including a condition mentioned in section 122D(3)(b)(ii)),

the lease is liable to forfeiture under section 35 as if that failure to comply were the breach of a condition or covenant referred to in that section.

[Section 131 inserted: No. 59 of 2000 s. ~~34~~34; amended: No. 4 of 2023 s. 68.]

132. Criminal liability not affected by forfeiture

(1) The liability of any person to be prosecuted for an offence against this Act or the *Soil and Land Conservation Act 1945* is not affected by the forfeiture of a pastoral lease to which the offence related.

(2) The liability of any person to the forfeiture of a pastoral lease is not affected by the imposition of a penalty for an offence in relation to a matter to which the liability to forfeiture related.

[Section 132 amended: No. 59 of 2000 s. 35.]

133. Abandoned lease, Minister's powers in case of

(1) If the Board advises the Minister that, in its opinion, land under a pastoral lease has been abandoned or has otherwise been left without proper care, control and management, the Minister may by instrument in writing authorise the Board or its agents to

enter the land under the lease and assume temporary care, control and management of the land until —

(a) the Board is satisfied that the care, control and management of the land has been assumed by the lessee or by some other person entitled to do so; or

(b) the pastoral lease has expired or been forfeited, the Minister has determined that the land will not be offered for another pastoral lease and pastoral operations on the land have been wound up.

(2) A pastoral lessee who is aggrieved by the issue of an authorisation under this section may lodge an appeal with the Minister under Part 3.

(3) An appeal under subsection (2) must be lodged within 30 days after the Board has entered the land under this section, or such longer period as the Minister in special circumstances allows.

(4) Any costs incurred by the Board in assuming the care, control and management of land under this section are a charge against the pastoral lease, with priority over all other charges against the lease, and recoverable by the Minister from the lessee in a court of competent jurisdiction as a debt due to the Crown.

(5) An instrument authorising entry under this section must, as soon as practicable, be registered against the certificate of Crown land title, but is valid from the time it is issued.

Division 8 — Transfers of pastoral holdings or shares

134. Transfer, mortgage etc. of lessee's interest, ministerial approval of

(1) With the Minister's approval in writing, but not otherwise, a pastoral lessee may —

(a) transfer to another person; or

(b) create a mortgage or charge over,

the lessee's interest in the pastoral lease, or any part of that interest, including any sublease, licence or profit à prendre.

(2) If the interest of a pastoral lessee is transferred by operation of law to the lessee's legal representative, executor or administrator or trustee in bankruptcy or, in the case of a company, a liquidator, administrator, receiver, receiver-manager or manager of the company, subsection (1) applies to that person as if that person were the pastoral lessee.

(3) The Minister must not unreasonably refuse to approve a transfer or mortgage or charge.

(4) If a transfer would result in the effective division of the land under the lease into parts with different occupiers, the Minister must not approve the transfer unless the Board is satisfied that —

(a) each part will be capable, when fully developed, of carrying sufficient authorised stock to enable it to be worked as an economically viable and ecologically sustainable pastoral business unit; or

(b) if a part is not so capable — the lease will be divided and that part amalgamated with the land of an adjoining pastoral lease; or

(c) if a part is not so capable — the lease will be divided and that part, together with an adjoining pastoral lease or part of an adjoining pastoral lease, will become a pastoral business unit under section 142A, the creation of which has been approved under that section.

(4a) If a division of a lease takes place under subsection (4)(a) —

(a) subject to subsection (8), each part of the land under the lease that was divided is to be held on the same conditions, including the term of the lease, as it was held before the division; and

(b) the provisions of this Act continue to apply in relation to each part of the land under the lease that was divided, as

if the land in each part subsists in the lease and the lease is a lease solely of that land; and

(c) without limiting paragraph (b), section 143(6) to (6i) apply in relation to each part of the land under the lease that was divided, as if the land in each part subsists in the lease and the lease is a lease solely of that land.

(4b) If a division of a lease takes place under subsection (4)(c) —

(a) subject to subsection (8), the land remaining in the lease that was divided and any land in the lease that was divided and included in a pastoral business unit under section 142A are to be held on the same conditions, including the term of the lease, as the land was held before the division; and

(b) the provisions of this Act continue to apply —

(i) in relation to the land remaining in the lease that was divided, as if that land subsists in the lease and the lease is a lease solely of that land; and

(ii) in relation to any land in the lease that was divided and included in a pastoral business unit under section 142A, as if the land subsists in the lease and the lease is a lease solely of that land;

and

(c) without limiting paragraph (b), section 143(6) to (6i) apply —

(i) in relation to the land remaining in the lease that was divided, as if that land subsists in the lease and the lease is a lease solely of that land; and

(ii) in relation to any land in the lease that was divided and included in a pastoral business unit under section 142A, as if the land subsists in the lease and the lease is a lease solely of that land.

(5) The Minister may refuse to approve a transfer until the return under section 113 relating to the previous 30 June has been submitted.

(6) For the purpose of deciding whether to approve a transfer of or mortgage or charge over an interest in a pastoral lease, the Minister may require any lessee, or if a lessee is a company, any director, shareholder or officer of the company, to make one or more statutory declarations containing such information as the Minister considers necessary for the decision.

(7) If the Minister approves a transfer of an interest in a pastoral lease to a body corporate ~~he or she~~the Minister may require such modifications to be made to the lease as ~~he or she~~the Minister thinks fit.

(8) If a transfer results in the effective division of the land under a lease into parts with different lessees, the annual rent for the lease is to be apportioned between the parts of the lease in proportion to the area of each part.

[Section 134 amended: No. 59 of 2000 s. ~~36~~36; No. 4 of 2023 s. 92.]

134A. Transfer of permits

(1) This section applies if —

(a) the Minister approves the transfer of a pastoral lessee's interest in a pastoral lease to another person (the ***transferee***) under section 134; and

(b) the land to which the lessee's interest relates is affected by a permit issued to the lessee under Division 5; and

(c) the transferee has written to the Board to request that the permit be transferred to the transferee; and

(d) the lessee is not in breach of any condition of the permit.

(2) If this section applies, the Board must transfer the permit to the transferee at the time of the transfer of the lessee's interest.

(3) The transfer of a permit under subsection (2) does not affect its term or conditions.

(4) If the conditions in subsection (1)(a) to (c) are satisfied but the condition in subsection (1)(d) is not satisfied, the Board may issue a new permit under Division 5 to the transferee.

[Section 134A inserted: No. 4 of 2023 s. 69.]

135. Company holding lease, restrictions on transfer etc. of shares etc. in

(1) If —

(a) the holder of a pastoral lease is a company; and

(b) the working of that pastoral lease, or the working of pastoral leases of which the company is the holder, constitutes the principal activity, or one of the principal activities, of the company,

the company must not register a transfer of any share in the company unless the transfer is done by means of an instrument of transfer and the instrument has been endorsed with the approval of the Minister to the transfer.

Penalty~~: $10~~ for this subsection: a fine of $20 000.

(2) A person who holds a beneficial interest in a share in a company referred to in subsection (1) must not transfer, mortgage or charge or otherwise dispose of the interest to any other person except with the consent in writing of the Minister.

Penalty~~: $10~~ for this subsection: a fine of $20 000.

(3) If a company is convicted of an offence against subsection (1), any pastoral lease held by the company is liable to forfeiture under section 35 as if that conviction were the breach of a condition or covenant referred to in that section.

(4) For the purposes of this section, a person has a beneficial interest in a share if that person, either alone or together with other persons, is entitled (other than as trustee for, on behalf of

or on account of, another person) to receive, directly or indirectly, any dividends in respect of the share or to exercise, or to control the exercise of, any rights attaching to the share.

[Section 135 amended: No. 4 of 2023 s. 91.]

136. Maximum area of leased land a person may hold

(1) The Minister must not —

(a) approve the grant of a pastoral lease to a person; or

(b) approve the transfer to the person of any interest in a pastoral lease,

if the result of the grant or transfer would be that the pastoral land imputed to the person under this section would exceed 500 000 hectares, unless the Minister is satisfied that the transfer would not result in so great a concentration of control of pastoral land as to be against the public interest.

(2) For the purposes of this section, pastoral land is imputed to persons as follows —

(a) if a person is sole lessee of a pastoral lease — the area of land under the lease is imputed to the person;

(b) if several persons are joint tenants of a pastoral lease — the whole area of the land under the lease is imputed to each of them;

(c) if several persons are tenants in common of a pastoral lease — the area of land under the lease is imputed to them in proportion to their respective shares in the lease;

(d) if a pastoral lessee is a company — the area of land imputed to it under paragraph (a) or (c) is also imputed to the shareholders in the proportion to the voting rights represented by their shareholdings.

(3) For the purposes of subsection (2)(d), each person who, either alone or together with other persons, is entitled (other than as trustee for, on behalf of or on account of, another person) to

receive, directly or indirectly, any dividends in respect of the share or to exercise, or to control the exercise of, any rights attaching to a share is deemed to hold that share.

Division 9 — Relations between the Pastoral Board and the Commissioner

137. Commissioner and Board to exchange information

(1) The Commissioner and the Board are to establish an administrative mechanism to ensure that any information relevant to their respective responsibilities in relation to land under pastoral leases is exchanged between them.

(2) The Commissioner must, not later than 31 December in each year, furnish to the Board a report on the current condition of land under pastoral leases in the State, by reference to regions of the State as defined by the Board for the purpose.

138. Commissioner to notify Board of certain soil conservation notices

Without affecting or limiting the powers of the Commissioner in relation to pastoral leases, the Commissioner must, before issuing a soil conservation notice that relates to the stocking of land under a pastoral lease, notify the Board in writing of the terms of the proposed notice.

Division 10 — Miscellaneous and transitional

139. Board's powers to investigate compliance by lessees

(1) The Board may investigate at any time whether the lessee of a pastoral lease is or has been complying with the conditions of the lease and with this Act.

(2) For the purpose of an investigation, the Board may authorise in writing a person to enter on the land subject to the lease and inspect it.

140. Renewal of lease, request by lessee for offer of etc.

(1) At any time during the period of 12 months before the date 10 years before the expiry of a pastoral lease, the lessee may apply in writing to the Minister requesting an offer of a renewal of the lease under this section.

(2) On receiving such an application, the Minister is to request the written advice of the Board on whether the lessee should be offered a renewal of the lease, or a grant of a lease over part of the land under the existing lease.

(3) The Minister must, not later than 8 years before the expiry of the lease, determine that —

(a) the lessee is not to be offered a renewal or grant, and notify the lessee accordingly; or

(b) determine that the lessee is to be offered a renewal of the lease, on specified conditions, and make an offer to the lessee accordingly; or

(c) determine that the lessee is to be offered the grant of a lease over part only of the land under the present lease, on specified conditions, and make an offer to the lessee accordingly.

(4) A renewal or grant offered under this section commences immediately upon the expiration of the lease concerned.

(5) The lessee, or the successor in title to the lessee, may accept an offer at any time within one year after the date that the offer is made.

(6) The regulations may provide that specified pastoral leases will not be renewed.

141. Boundaries between leases, Minister's powers to change

(1) On the recommendation of the Board, the Minister may by order provide that any boundary between land under 2 pastoral leases is changed in the way specified in the order.

(2) The Minister may not make an order under this section except on the application of the lessees of the 2 pastoral leases and payment of the prescribed fee, if any.

(3) The annual rent for a pastoral lease affected by an order under this section is to be adjusted in proportion to any change produced by the order in the stock-carrying capacity of the land under the lease.

142. Amalgamation of leases, Minister's powers as to

(1) If —

(a) 2 or more pastoral leases are held by the same lessees; and

(b) the leases are held on the same conditions, other than the term of the lease; and

(c) the lessees hold the same proportionate shares of each lease,

the Minister may, on the recommendation of the Board, by order provide that the leases be amalgamated.

(2) If the lessees of pastoral leases eligible for amalgamation request the Board to recommend amalgamation and have paid the prescribed fee, if any, the Board must consider the request and must not unreasonably refuse to recommend amalgamation to the Minister.

(3) If a lease affected by an amalgamation order is subject to a mortgage or charge, then, unless the mortgagees or chargees agree and the order provides otherwise, each mortgage or charge is deemed, on registration of the order, to have been replaced by a mortgage or charge on the amalgamated lease with the same terms and conditions, with the same priority date, and secured by the same area of land as before the amalgamation.

(4) An amalgamation order must specify a name for the amalgamated lease.

142A. Pastoral business units, creation of etc.

(1) If —

(a) a pastoral lease granted under section 101(1) or a pastoral lease or a part of a lease the transfer of which was approved under section 134(4)(c) and an adjoining lease are held by the same lessees; and

(b) the lessees hold the same proportionate share of each lease or part of a lease,

the Minister may in writing approve the creation of a pastoral business unit comprising those leases or parts of leases and specify the name of the pastoral business unit.

(2) If the Minister gives approval under subsection (1), the Minister is to lodge a memorial in an approved form with the Registrar in respect of each lease or part of a lease comprising the pastoral business unit stating that the lease or part of a lease is part of the pastoral business unit and the name of the pastoral business unit.

(3) The Minister may in writing approve a variation of the leases or parts of leases comprising a pastoral business unit and, if ~~he or she~~the Minister does so, is to —

(a) lodge a memorial under subsection (2) in relation to any lease or part of a lease which has been added to a pastoral business unit; or

(b) withdraw a memorial under subsection (2) in relation to any lease or part of a lease which has ceased to be part of a pastoral business unit.

(4) If a memorial is lodged or withdrawn under subsection (2) or (3), the Registrar is to endorse on each certificate of Crown land title, or qualified certificate of Crown land title, subject to

the lease referred to in the memorial particulars of the memorial or of a variation or withdrawal of a memorial.

(5) If a memorial is lodged under subsection (2), sections 134 and 136 apply to all of the leases or parts of leases comprising the pastoral business unit so long as the leases or parts of leases are part of the pastoral business unit as if a reference in those sections to a lease were a reference to all of the leases or parts of leases comprising the pastoral business unit.

(6) The Minister may in a memorial lodged under subsection (2), declare that the provisions of Part 7, or any of those provisions, apply to all of the leases or parts of leases comprising the pastoral business unit so long as the leases or parts of leases are part of the pastoral business unit as if a reference in those sections to a lease were a reference to all of the leases or parts of leases comprising the pastoral business unit.

(7) The Minister may in a memorial in an approved form vary a memorial lodged under subsection (2) and is to lodge such a memorial with the Registrar.

(8) If a memorial is lodged under subsection (7), the Registrar is to endorse on each certificate of Crown land title, or qualified certificate of Crown land title, subject to the lease referred to in the memorial particulars of the memorial.

[Section 142A inserted: No. 59 of 2000 s. ~~37~~37; amended: No. 4 of 2023 s. 92.]

143. Leases in force at 30 Mar 1998, transitional provisions for

(1) A pastoral lease subsisting under the repealed Act immediately before the appointed day (***existing pastoral lease***) continues in existence subject to this Act, as if it had been granted under this Part.

[(2)-(4) deleted]

(5) An application made under section 98(11) of the repealed Act but not disposed of under that section before the appointed day may be disposed of under that section as if the repealed Act had not been repealed.

(5a) If an application is disposed of under section 98(11) of the repealed Act either before or after the appointed day by the lessee accepting the offer of a lease or an extension of a lease, as the case may be, the grant or extension commences immediately upon the expiration of the lease concerned in relation to any land subsisting in the lease at the expiration of the lease.

(6) If a lessee of a pastoral lease —

(a) was entitled under section 98(11)(a) of the repealed Act to make an application at any time during 1995 but did not do so; or

(b) was granted the lease between 1 January 1996 and 29 March 1998 (both inclusive),

the Minister may —

(c) treat that lessee or the successor in title as if he or she had made an application under that section (the ***deemed application***); and

(d) consider and determine the matters referred to in section 98(11)(a) of the repealed Act in relation to the deemed application and give the lessee or the successor in title notice in writing of his or her decision not later than the day that is one year after the day on which section 38 of the *Land Administration Amendment Act 2000* comes into operation or such other day as is prescribed.

(6a) A notice given to a lessee or a successor in title under subsection (6)(d) is deemed to be an offer of a lease or an extension of a lease, as the case may be, at the rent and on the other terms and conditions specified in the notice.

(6b) The lessee or the successor in title may accept the offer referred to in subsection (6a) on or before the day specified in the notice, which day is not to be less than one year after the day on which the notice is given.

(6c) Subject to subsection (6g), if the lessee or the successor in title accepts the offer of a lease or an extension of a lease, as the case may be, under subsection (6a), the grant or extension commences immediately upon the expiration of the lease concerned in relation to any land subsisting in the lease at the expiration of the lease.

(6d) The Minister may for a public purpose exclude land from a lease granted or extended under subsection (6c) by giving a notice in writing under subsection (6e) to the lessee or successor in title to the lease not later than 2 years after the day on which section 38 of the *Land Administration Amendment Act 2000* comes into operation.

(6e) The notice under subsection (6d) is to contain the following information —

(a) a description of the area of land to be excluded from the lease; and

(b) the reason for the land being excluded from the lease; and

(c) any reduction in the rent payable under the lease as a result of the exclusion of the land from the lease; and

(d) any proposed variation in the conditions of the lease as a result of the exclusion of the land from the lease; and

(e) that the land is to be excluded from the lease or extension concerned upon the commencement of the lease or extension, as the case may be.

(6f) If a lessee is given a notice under subsection (6d) the lessee may —

(a) accept the conditions contained in the notice; or

(b) withdraw from the lease; or

(c) enter into negotiations with the Minister on the area to be excluded from the lease or the rent to be paid as a result of the exclusion of the land from the lease.

(6g) If agreement is not reached on the matters referred to in subsection (6f)(c) by the day that is 2 years, or such longer period as may be prescribed, after the day on which the notice was given to the lessee (the ***final day***), the lessee is to be regarded as having withdrawn from the agreement to lease or to extend the lease on the final day.

(6h) If land is not to be excluded from a lease granted or extended under subsection (6c) for a public purpose, the Minister may give notice in writing to that effect to the lessee not later than 2 years after the day on which section 38 of the *Land Administration Amendment Act 2000* comes into operation.

(6i) If a notice is not given by the day specified in subsection (6d) no land may be excluded from the lease under that subsection.

[(7~~), (8~~)-(9) deleted]

~~(9) Section 140 does not operate in relation to an existing pastoral lease.~~

(10) In this section —

public purpose means for the purpose of a public work within the definition of the expression ***public work*** in the *Public Works Act 1902*, conservation, a national park, a nature reserve or a purpose which serves or is intended to serve the interests of the public or a section of the public.

[Section 143 amended: No. 59 of 2000 s. 38; No. 32 of 2009 s. ~~6.]~~6: No. 4 of 2023 s. 70.].]

Part 8 — Easements

143A. Term used: grantee

In this Part —

grantee, of an easement, means —

(a) the grantee of the easement under section 144; or

(b) if the easement is transferred under section 147(2), the person to whom the easement is transferred.

[Section 143A inserted: No. 4 of 2023 s. 71]

144. Easements over Crown land, Minister's powers to grant etc.

(1) Subject to this section, the Minister may —

(a) with the consent of every management body of the relevant Crown land and of every person having any interest, right, title or power in respect of that land, grant to any person an easement in, on, over, through or under that Crown land for a specified purpose or any other purpose the Minister thinks fit; and

(b) in that grant express that easement to be subject to specified conditions and the payment of specified consideration.

(2) The grantee of an easement may, with the consent of any management body or lessee of the relevant Crown land, apply to the Minister for the easement to be varied or cancelled.

(2a) An easement may be granted under this section despite the fact that the characteristics of the easement do not satisfy all of the characteristics that must be satisfied for an easement to be created under the common law.

(3) The Minister may, on receiving an application under subsection (2) —

(a) by order or other instrument vary or cancel the relevant easement; or

(b) refuse the application.

(4) In this section —

specified purpose means for —

(a) the provision of pipes, conduits, cables, transmission lines, and other services; or

(b) the provision of any structure, plant, or equipment; or

(c) the provision of access for carrying out of any works and the performance of any maintenance that is necessary for, or ancillary or incidental to, giving effect to any of the purposes referred to in paragraph (a) or (b); or

(d) a prescribed purpose.

[Section 144 amended: No. 59 of 2000 s. 39.]

145. Cancelling s. 144 easements

(1) The Minister may, after notice in writing in an approved form has been served on the grantee of an easement ~~under section 144~~ and any lessee or management body of the relevant Crown land, by order cancel the easement if —

(a) the easement has been used —

(i) for a purpose other than the purpose for which it was granted; or

(ii) contrary to any right, power or privilege pertaining to the easement;

or

(b) default occurs in complying with any condition, or in paying any consideration, to which the easement is subject; or

(c) that grantee in writing requests the Minister to cancel the easement.

(2) A grantee of an easement may, within the period of 30 days after the service on ~~him or her~~the grantee of notice under

subsection (1) or such longer period as the Minister in special circumstances allows, lodge with the Minister an appeal under Part 3 against the proposed cancellation of the easement under subsection (1)(a) or (b).

[Section 145 amended: No. 4 of 2023 s. 72 and 92.]

146. ~~Easements~~Effect of easements granted under s. 144~~, effect of~~

Subject to ~~section 229A of the TLA and to~~ sections 144 and 145, an easement granted under section 144 in respect of Crown land continues to have effect ~~in respect of the land subject to it~~ despite —

(a) the grant of any other interest in the land; or

(b) the transfer in fee simple of the land; or

(c) the surrender or other extinguishment of any other interest in~~,~~ the land.

~~that land.~~

[Section 146 inserted: No. 4 of 2023 s. 73.]

147. Easements in gross may be granted under s. 144 and transferred

(1) An easement may be granted under section 144 without there being a dominant tenement and there may be made appurtenant to or annexed to an easement so granted another easement or the benefit of a restriction relating to the user of the land concerned.

(2) The Minister may, by order, transfer an easement granted as described in subsection (1).

(3) If an easement is transferred under subsection (2), the person holding the easement immediately before the transfer is not liable for a breach of any condition to which the easement is subject that occurs after the transfer.

[Section 147 amended: No. 4 of 2023 s. 74.]

148. Conditional tenure land, grant of easement by holder of

A person holding land for an estate in fee simple transferred under section 75 is not prevented from creating in favour of any person an easement affecting the land only because the land is to be used for a particular purpose or in accordance with a particular condition, positive covenant or restrictive covenant, but must not create any such easement without the permission of the Minister.

149. Holder of interest in Crown land with right to acquire fee simple, grant of easement by

When an interest in Crown land is granted subject to the right of the holder of that interest to acquire the fee simple of the Crown land, that holder is not prevented from creating in favour of any person an easement affecting the Crown land only because that holder has not yet acquired that fee simple, but an easement so created terminates if the right to acquire that fee simple is forfeited under section 35.

150. Easements no longer serving any purpose, cancelling

(1) When an easement is registered in respect of Crown land —

(a) any management body or lessee of the Crown land; or

(b) any other person having any interest or right in the Crown land,

may request the Minister by order to cancel the easement because it no longer serves any purpose.

(2) On receiving a request made under subsection (1), the Minister must, if ~~he or she~~the Minister intends to comply with that request, serve notice of that intention on —

(a) the grantee ~~under section 144~~ of the easement concerned, or the person in whose favour it was created, as the case requires; and

(b) any other person who appears to have an estate or interest in land that comprises a dominant tenement benefiting from the easement concerned; and

(c) the Registrar.

(3) A notice served under subsection (2) must be dated, and must include or contain a copy of a plan of survey or sketch plan showing the relevant easement.

(4) An entry made in the Register recording that a notice was served under subsection (2) on a person whose address appears in the Register and the date of that service is —

(a) admissible in evidence in any proceedings; and

(b) in the absence of evidence to the contrary, proof of the facts so recorded.

(5) The Minister may, if ~~he or she~~the Minister is satisfied after making all reasonable inquiries that the easement the subject of that request no longer serves any purpose —

(a) by order cancel that easement; and

(b) advise in writing each person on whom notice was served under subsection (2) of the making of that order.

[Section 150 amended: No. 4 of 2023 s. 75 and 92]

Part 9 — Compulsory acquisition of interests in land

Division 1 — Preliminary

Subdivision 1 — Interpretation

151. Terms used

(1) In this Part and Part 10 —

acquiring authority, in relation to land, means the person or body having the statutory authorisation referred to in section 161 to undertake, construct or provide any public work;

claimant means a person entitled to claim compensation under Part 10;

date of taking, in relation to an interest in land taken under this Part, means —

(a) the date specified in the taking order as the date of taking, if a date is so specified; or

(b) the date of registration of the taking order, in any other case;

designate, in relation to an interest in land, means to reserve, declare, covenant, dedicate, set apart or otherwise mark off for use for a specified purpose by means of an annotation on or instrument registered against the certificate of title or certificate of Crown land title; and ***designated*** and ***designation*** are construed accordingly;

holding authority, in relation to an interest in land designated for the purpose of a public work, means —

(a) the management body, if the interest is held by the Crown and subject to a management order; or

(b) the holder of the interest, in any other case;

interest means any legal or equitable estate or interest in land, including —

(a) native title rights and interests; and

(b) interests or rights created under any written law; and

(c) the rights of a management body under a management order;

native title, ***native title holder*** and ***native title rights and interests*** have the same meaning as they have in the NTA;

notice of intention means a notice issued under section 170;

NTA means the *Native Title Act 1993* of the Commonwealth;

occupier, in relation to land, means a person who, in exercise of a right of possession, is in actual occupation of the land, but does not include anyone who is in occupation of the land merely as a member of the family or household of such a person;

principal proprietor, in relation to land, means —

(a) the Minister, in the case of Crown land not subject to a management order and of which no lease has been granted; or

(b) the lessee, in the case of Crown land not subject to a management order and of which a lease has been granted; or

(c) the management body, in the case of Crown land subject to a management order; or

(d) the holder of the fee simple, in any other case;

Principal Registrar of the Supreme Court has the same meaning as in the *Supreme Court Act 1935*;

proprietor, in relation to a portion of land, means —

(a) a person with a registered interest in the land; or

(b) the holder of any native title rights and interests in the land, whether or not registered;

~~***public work*** and ***work*** have the same meaning as in the *Public Works Act 1902*;~~

railway has the same meaning as in the *Public Works Act 1902*;

Registrar of Deeds, in relation to land under the *Registration of Deeds Act 1856*, means the Registrar of Deeds and Transfers under that Act;

special Act has the same meaning as in the *Public Works Act 1902*;

take, ***taken*** and ***taking*** have the meaning given by subsection (2);

taking order means an order made under section 177.

(2) For the purposes of this Part and Part 10 —

(a) a reference to the taking of an interest in land is a reference to the extinguishment of the interest, or its extinguishment subject to section 155, by a taking order;

(b) a reference to the taking of land is a reference to the extinguishment of every interest in the land, or its extinguishment subject to section 155, together with the revocation of each management order in relation to the land, by a taking order, subject to such exceptions as are specified in the order.

(3) Terms used in Part 10 relating to members of the State Administrative Tribunal have the meanings given to them in section 3(1) of the *State Administrative Tribunal Act 2004*.

[Section 151 amended: No. 59 of 2000 s. 40; No. 55 of 2004 s. 547; No. 47 of 2011 s. ~~16~~16; No. 4 of 2023 s. 76.]

Subdivision 2 — Provisions relating to native title

152. Objective of this Part and Part 10 as to NTA

It is an objective of this Part and Part 10 to ensure that —

(a) if the taking of interests in land under this Part affects native title, in terms of section 227 of the NTA, the taking is a valid future act under sections 24MB(1)(b) and 24MD(1) of the NTA;

[(b) deleted]

(c) this Act is consistent with the procedural requirements of the NTA.

[Section 152 amended: No. 61 of 1998 s. 6.]

[152A. *Has not come into operation* [1]*.]*

153. Giving notice under NTA to native title holders if no approved determination of native title, effect of for this Act

(1) This section applies if —

(a) this Act requires notice of any thing to be given to persons who include native title holders; and

(b) there has been no approved determination of native title within the meaning of that expression in the NTA; and

(c) section 154 does not apply.

(2) Where this section applies —

(a) the giving of notice in accordance with the NTA satisfies the relevant requirement of this Act in relation to native title holders; and

(b) if the notice relates to a taking, the subsequent service of the order and forms referred to in paragraph (c) of section 177(5) of this Act in accordance with the NTA, as if they were a notice, satisfies the requirements of that paragraph in relation to native title holders.

(3) In subsection (2) —

in accordance with the NTA means —

(a) if Part 5 of the *Native Title (State Provisions) Act 1998* is in operation and the notice, or the order and forms, relate to a taking that is a Part 5 act within the meaning of that Act, in accordance with Division 2 of Part 5 of that Act; or

(b) if paragraph (a) does not apply, in the manner provided for by section 24MD(7) of the *Native Title Act 1993* of the Commonwealth.

[Section 153 inserted: No. 61 of 1998 s. 8.]

154. Giving notice under NTA to native title holders if NTA Part 2 Div. 3 Subdiv. P applies, effect of for this Act

(1) This section applies if —

(a) interests in land are intended to be taken under section 161 or 165; and

(b) Part 2, Division 3, Subdivision P of the NTA is applicable to the taking by virtue of section 26(1)(c)(iii) of the NTA.

(2) Where this section applies —

(a) the giving of notice in accordance with the NTA satisfies the requirements of section 170(5)(b) of this Act in relation to native title holders; and

(b) the service of the order and forms referred to in paragraph (c) of section 177(5) of this Act in accordance with the NTA, as if they were a notice, satisfies the requirements of that paragraph in relation to native title holders.

(3) In subsection (2) —

in accordance with the NTA means —

(a) if Part 3 of the *Native Title (State Provisions) Act 1998* is in operation and the taking is a Part 3 act within the meaning of that Act, in accordance with Division 3 of Part 3 of that Act; or

(b) if Part 4 of the *Native Title (State Provisions) Act 1998* is in operation and the taking is a Part 4 act within the meaning of that Act, in accordance with Division 3 of Part 4 of that Act; or

(c) if paragraph (a) or (b) does not apply, in accordance with section 29 of the *Native Title Act 1993* of the Commonwealth.

[Section 154 inserted: No. 61 of 1998 s. 8.]

155. Native title rights and interests, effect of taking under this Part

If any native title right or interest is taken under this Part, the right or interest is extinguished to the extent permitted by the NTA.

[Section 155 inserted: No. 61 of 1998 s. 9.]

156. Claims for compensation for native rights and interests, determining etc.

(1) A claim for compensation by native title holders for the taking of native title rights and interests is to be determined as if the rights and interests —

(a) had been extinguished by the taking; and

(b) at that time had been converted into a claim for compensation in accordance with section 179.

(2) No further claim for compensation arises under Part 10 from the subsequent effect on the native title rights and interests of any act that is done in giving effect to the purpose of the acquisition.

(3) In the determination of compensation under Part 10 for the effect on native title rights and interests of the taking of interests in land, account is to be taken of any compensation awarded under the NTA, or any other written law, for essentially the same loss.

157. Claims for compensation for native title rights and interests, who may make

Any claim for compensation under Part 10 for the effect on native title rights and interests of the taking of interests in land under this Part is to be made by the native title holders.

158. Compensation paid for native title rights and interests, recovery of if purpose of taking is cancelled

(1) If —

(a) an interest in land has been taken under this Part; and

(b) compensation has been paid for the effect on native title rights and interests of the taking of the interest; and

(c) the designation of the interest is cancelled in accordance with section 187,

the taking of the interest, so far as it may have affected native title rights and interests, wholly ceases to operate.

(2) Notice of the cancellation must be given to the native title holders, and may be given in the manner provided for by subsection (7) of section 24MD of the NTA as if the cancellation were an act to which that subsection applies.

(3) Subject to this section, on registration of the cancellation —

(a) a sum equal to the amount of the monetary compensation mentioned in subsection (1)(b) that has been paid to any person becomes a debt due by that person to the Crown; and

(b) the debt may be recovered by the Minister in a court of competent jurisdiction.

(4) Subsection (3) does not apply to any compensation that has been paid to a person, other than a trustee under the NTA, if a period of 3 years or more has passed since the interest in the land was taken.

(5) This section has no effect in relation to any person, not being a native title holder, who had an interest that was taken.

[Section 158 amended: No. 61 of 1998 s. 10.]

Subdivision 3 — Delegation

[Heading amended: No. 13 of 2000 s. 97.]

159. Delegation by Minister to certain other Ministers

The Minister may, by notice published in the *Gazette*, either generally or as otherwise provided by the notice, delegate to —

(a) the Minister responsible for the administration of the *Public Works Act 1902*; or

(b) the Minister responsible for administering the *Main Roads Act 1930*; or

(c) the Minister responsible for administering the *Energy Operators (Powers) Act 1979*; or

[(d) deleted]

(da) the DBNGP Land Access Minister established by section 29(1) of the *Dampier to Bunbury Pipeline Act 1997*; or

(db) the Minister responsible for administering the *Government Railways Act 1904*; or

(e) the Minister responsible for administering the *Water Agencies (Powers) Act 1984*; or

(ea) the Minister responsible for administering the *Contaminated Sites Act 2003*; or

(eb) the Minister responsible for administering the *Water Services Act 2012*; or

(f) the Minister responsible for administering the *Marine and Harbours Act 1981*; or

(g) the Minister responsible for administering the *Financial Management Act 2006*,

any of ~~his or her~~the Minister's powers or duties under this Part or Part 10.

[Section 159 amended: No. 53 of 1997 s. 52; No. 58 of 1999 s. 104(a); No. 13 of 2000 s. 98; No. 24 of 2000 s. 20(1); No. 59 of 2000 s. 41; No. 31 of 2003 s. 150(2); No. 60 of 2003 s. 100; No. 25 of 2005 s. 34; No. 77 of 2006 Sch. 1 cl. 93(6); No. 46 of 2009 s. 17; No. 25 of 2012 s. 220(2~~).]~~); No. 4 of 2023 s. 92.]

160. Subdelegation of power or duty delegated under s. 159

(1) A Minister or body to whom a power or duty has been delegated under section 159 may, either generally or as otherwise provided by the notice concerned, by notice published in the *Gazette* delegate —

(a) in the case of the Minister referred to in section 159(a), to the chief executive officer of the Department principally assisting that Minister in the administration of the *Public Works Act 1902* or to any other officer of that Department;

(b) in the case of the Minister referred to in section 159(b), to the Commissioner within the meaning of the *Main Roads Act 1930* or to any officer of that Commissioner;

(c) in the case of the Minister referred to in section 159(c), to a body established by section 4(1) of the *Electricity Corporations Act 2005*, namely —

(i) the Electricity Networks Corporation; and

(ii) the Regional Power Corporation,

or to an officer of such a body;

[(d) deleted]

(da) in the case of the DBNGP Land Access Minister established by section 29(1) of the *Dampier to Bunbury Pipeline Act 1997*, to the chief executive officer of the department principally assisting the DBNGP Land Access Minister in the administration of Part 4 of that Act or to any other officer of that department;

(db) in the case of the Minister referred to in section 159(db), to the Authority within the meaning of the *Government Railways Act 1904* or to any officer of the Authority within the meaning of that Act;

(e) in the case of the Minister referred to in section 159(e), to the CEO within the meaning of the *Water Agencies (Powers) Act 1984* or to any officer of the Department within the meaning of that Act;

(ea) in the case of the Minister referred to in section 159(ea), to the chief executive officer of the Department principally assisting the Minister in the administration of the *Contaminated Sites Act 2003* or to any other officer of that Department;

(eb) in the case of the Minister referred to in section 159(eb), to the holder of a licence granted under the *Water Services Act 2012* section 11 or to any officer or employee of the holder of the licence;

(f) in the case of the Minister referred to in section 159(f), to the chief executive officer of the Department principally assisting that Minister in the administration of the *Marine and Harbours Act 1981* or to any other officer of that Department;

(g) in the case of the Minister referred to in section 159(g), to the chief executive officer of the Department principally assisting that Minister in the administration of the *Financial Management Act 2006* or to any other officer of that Department,

the whole or any part of the power or duty.

(2) A Minister or body who exercises the power of delegation conferred on ~~him or her~~them by subsection (1), must as soon as is practicable transmit to the Minister a copy of the notice by which that power was exercised.

[Section 160 amended: No. 53 of 1997 s. 52; No. 58 of 1999 s. 104(b); No. 13 of 2000 s. 99; No. 24 of 2000 s. 14(13) and 20(2); No. 59 of 2000 s. 42; No. 31 of 2003 s. 150(3); No. 60 of 2003 s. 100; No. 18 of 2005 s. 139; No. 25 of 2005 s. 35; No. 77 of 2006 Sch. 1 cl. 93(7); No. 38 of 2007 s. 196; No. 46 of 2009 s. 17; No. 25 of 2012 s. 220(3~~).]~~); No. 4 of 2023 s. 92.]

Division 2 — Taking interests in land

Subdivision 1 — Land required for a public work

161. Interests in land may be taken etc.

(1) Whenever the Crown, the Governor, the Government, any Minister of the Crown, any State instrumentality or any local government is authorised, by this Act, the *Public Works Act 1902* or any other Act, to undertake, construct or provide any public work, and the use of any land or any interest in land is required for the purposes of the work, then, unless otherwise specially provided —

(a) any interest in the land held by a person other than the Crown may be taken; and

(b) subject to Part 4, any designation of the land or of any interest in the land may be removed; and

(c) any management order affecting the land may be revoked or modified, whatever the purpose for which the order had been made, whether local or general; and

(d) any interest in the land held by the Crown or taken from some other person under paragraph (a) may be disposed of or granted to any other person; and

(e) any interest in the land held by the Crown or taken from some other person under paragraph (a) (including an interest disposed of or granted under paragraph (d)) may be designated for the purpose of the public work,

in accordance with this Part.

(2) The powers under subsection (1) may be exercised at any time, and whether or not the powers have previously been exercised for the purposes of that public work.

162. Underground land, interests in may be taken etc.

(1) For the purpose of constructing any underground work, an interest in land under the surface may be taken under this Part without taking any interest in the surface.

(2) In such a case no compensation is payable unless —

(a) the surface of the overlying soil is disturbed; or

(b) the support to the surface is destroyed or injuriously affected; or

(c) a mine, underground working, spring, reservoir, dam, or well in or adjacent to the land is injuriously affected,

by the construction of the work.

163. Certain materials and interests in land not to be taken without consent of Minister or principal proprietor

Except for the purposes of a railway, of roads in connection with such purposes, or of a work to be made under the authority of a special Act, nothing in this Part authorises —

(a) the taking of any stone or other material from any quarry, brickfield, or like place ordinarily used to produce the material for sale; or

(b) the taking of any interest in land that is occupied by any building, yard, garden, orchard, or vineyard, or is in genuine use as a recreation park,

without the consent in writing of the Minister or of the principal proprietor of the land.

164. Mineral, petroleum and geothermal energy rights may be excluded from taking order

(1) If a taking order provides that land is to be taken, or that an interest in fee simple in land is to be taken, the interest taken includes —

(a) all rights to any minerals under the land; and

(b) the petroleum rights referred to in the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Pipelines Act 1969*, and the *Petroleum (Submerged Lands) Act 1982*; and

(c) the rights relating to geothermal energy resources and geothermal energy referred to in the *Petroleum and Geothermal Energy Resources Act 1967*,

unless the order provides otherwise.

(2) If a claim is made for compensation in respect of the taking of any right referred to in subsection (1), the acquiring authority may elect either to make compensation or to re-grant the whole of those rights or such part of those rights as the acquiring authority thinks fit.

(3) If rights are re-granted to the claimant under subsection (2), no compensation is payable in respect of the taking of the rights re-granted.

[Section 164 amended: No. 35 of 2007 s. 98(7).]

Subdivision 2 — Land required for the purpose of conferring interests

165. Interests in land may be taken etc.

(1) Whenever a written law permits the grant of any estate, interest, right, power or privilege in, over or in relation to land, and any land is required for the purposes of the grant, the Minister may by order authorise the doing in relation to the land of any of the acts permitted under section 161.

(2) The Minister may only exercise the power conferred by subsection (1) or (4) in respect of any land if every proposed grant will be for the purpose of enabling the use or development of the land, or the doing of both of those things, in a way that, in the opinion of the Minister, confers an economic or social benefit on the State or the relevant region or locality.

(3) Nothing in this Subdivision affects the power under a written law to make a grant of a kind referred to in subsection (1) in, over or in relation to land where interests in the land have been taken under Subdivision 1.

(4) The Minister may by order —

(a) revoke or amend an order made under subsection (1); or

(b) revoke an order made under subsection (1) and replace it with another order.

[Section 165 amended: No. 61 of 1998 s. 11; No. 59 of 2000 s. 43.]

166. Application of this Part and Part 10 to taking authorised, and interests taken, under s. 165

(1) This Part and Part 10 apply in relation to a taking of interests in land authorised under section 165 as if —

(a) the taking were for a public work; and

(b) a reference to the purposes of a public work were a reference to the purposes of a proposed grant.

(2) This Part and Part 10 apply in relation to interests in land that have been taken in accordance with an authorisation under section 165(1) as if —

(a) the interests had been designated for the purposes of the granting of the estate, interest, right, power or privilege in, over or in relation to land for which the taking had been authorised; and

(b) those purposes were the purposes of a public work.

167. Agreement as to payment of compensation etc. by person who will get grant for which s. 165 taking is authorised

(1) If, at the request of a person, it is proposed that the taking of an interest in land be authorised under section 165 for the purpose of a grant to the person, the Minister and the person may enter into an agreement as to the amount or the maximum amount that the person will be liable to pay to the Crown in respect of the taking, if it occurs, by way of reimbursement of —

(a) the moneys payable by way of costs or compensation under section 258; and

(b) the value of any non-money compensation given under section 212; and

(c) any compensation payable under section 24MD(2)(e) or (3)(b) of the NTA.

(2) If the proposal is carried out, the Minister may in writing require the person to pay to the Crown the amount or the maximum amount so agreed, and at such time or times as the Minister may specify.

(3) An amount required to be paid by a person under this section is a debt due by that person to the Crown and may be recovered by the Minister in a court of competent jurisdiction.

[Section 167 amended: No. 61 of 1998 s. 12.]

Division 3 — Procedure for taking interests in land and designating for a public work

Subdivision 1 — Procedure for taking interests in land by agreement

168. Agreement to purchase or consent to take required interest, acquiring authority's powers as to

(1) If any interest in land is required for a public work, the acquiring authority may, whether or not a notice of intention has been registered —

(a) enter into an agreement to purchase the interest; or

(b) obtain the written consent of the person to the taking of the interest, with compensation to be provided under Part 10.

(2) On commencing negotiations with any person for such an agreement, the acquiring authority must advise the person, by means of a statement in an approved form, of procedures under this Part and Part 10 for the taking of land, payment of purchase money or compensation for land taken, rights of appeal or review and rights as to the future disposition of interests in land taken by agreement or compulsorily taken.

[Section 168 amended: No. 55 of 2004 s. 567.]

169. Purchase price in agreement to purchase

(1) An agreement under section 168(1)(a) may specify a purchase price or other consideration for the interest in the land, or may provide for it to be assessed as if for compensation under Part 10.

(2) Consideration for the interest may include a grant of an interest in any Crown land available for the purpose.

(3) An agreement may provide for the reimbursement of property valuation costs incurred by the holder of the interest.

Subdivision 2 — Procedure for taking interests in land without agreement

170. Notice of intention to take required interest, issue of etc.

(1) Subject to this section, if it is proposed to take interests in land without agreement under this Part, the Minister must issue a notice of intention to take the interests, in accordance with this section.

(2) A notice of intention need not be issued if the proposed taking is for the purpose of a railway authorised by a special Act.

(3) A copy of the notice must be sent to the Registrar of Titles or the Registrar of Deeds, as appropriate.

(4) Upon the receipt of the notice —

(a) the Registrar of Titles must register the notice in the document of title relating to the land; or

(b) the Registrar of Deeds must register a memorial of the notice on the Deeds Register,

as appropriate.

(5) As soon as possible after the registration of the notice, the Minister must —

(a) cause a copy of the notice to be published once in a daily newspaper circulating throughout the State;

(b) cause a copy of the notice to be served on the principal proprietor of any land affected by the notice, the occupier of the land and the holders of any native title rights or interests, or of any mining, petroleum or geothermal energy rights, in the land, either personally or by ~~certified mail posted~~registered post (or any similar type of post that is prescribed) sent to their last known place of residence;

(c) cause a copy of the notice to be given to the Director General of Mines referred to in the *Mining Act 1978*;

(d) advise the persons mentioned in paragraph (b) of the procedures under this Part and Part 10 for the taking of land, payment of purchase money or compensation for land taken, rights of appeal or review and rights as to the future disposition of land taken by agreement and compulsorily taken, unless they have already been given that advice.

(6) The Minister may cancel or amend the notice of intention, or cancel the notice and substitute another notice of intention, by a notice issued, published and distributed in the same way as the original notice.

(7) The notice of intention, or substituted notice of intention, remains current for 12 months, or a longer period determined under subsection (8), from the date of registration, unless cancelled.

(8) The Minister may, in respect of a particular notice of intention, determine that a longer period applies for the purposes of subsection (7).

(9) A determination under subsection (8) —

(a) must be made while the notice of intention is current; and

(b) must be notified in writing to the relevant persons mentioned in subsection (5)(b) and (c); and

(c) may be made more than once.

(10) Subsections (3) and (4) apply to a determination under subsection (8) as if it were a notice of intention.

[Section 170 amended: No. 61 of 1998 s. 13(1) and (2)[7]*; No. 55 of 2004 s. 567; No. 35 of 2007 s. 98(8).]; No. 4 of 2023 s. 77.]*

171. Notice of intention, content and validity of

(1) A notice of intention must include —

(a) a description of the land required; and

(b) particulars of —

(i) the purpose of the public work for which the land is proposed to be designated;

(ii) the nature of the interests to be taken;

and

(c) if it is proposed to make a disposition or grant to any person out of the interests proposed to be taken, a statement to that effect and particulars of the disposition or grant to be made; and

(d) particulars of —

(i) a place where persons interested may at any reasonable time inspect a plan of the land; and

(ii) the reasons why the land is suitable for, or is needed for, the public work; and

(iii) the date from which the land is likely to be required; and

(iv) the name of a contact officer in the acquiring authority; and

(v) an address for lodging objections;

and

(e) a statement of the effect of section 172; and

(f) a statement of the effect of section 173.

(2) A notice of intention issued in good faith is not invalidated by reason only that it contains an error or omission in the information required by subsection (1)(d), (e) or (f).

172. No transaction affecting required land without Minister's consent

(1) This section applies to a transaction affecting land which is included in a current notice of intention, other than a transaction mentioned in subsection (6).

(2) A person may not enter into a transaction to which this section applies except with the consent in writing of the Minister.

(3) A transaction entered into in contravention of subsection (2) is void.

(4) An application for the Minister's consent under this section for a proposed transaction must be in writing.

(5) A person who is a party to the transaction must —

(a) furnish in writing such particulars of the transaction as the Minister may require as being necessary to enable

the Minister to determine whether any party to the transaction is fully aware of the implications of the notice of intention to take the land; and

(b) to furnish such statutory declarations in support of the particulars furnished under paragraph (a) as the Minister may require.

(6) If the Minister is of the opinion that any party to a transaction to which this section applies is not fully aware of the implications of the notice of intention to take the land affected by the transaction, and that the party would, if ~~his or her~~the Minister's consent were given, be likely to incur loss, the Minister may withhold consent to the transaction.

(7) This section does not apply to a transaction —

(a) to which the State or the Commonwealth, or any authority of the State or Commonwealth, or a person acting on behalf of the State, the Commonwealth or such an authority, other than the Public Trustee, is a party; or

(b) by which an interest in land is acquired on sale under a writ or warrant of execution issued out of any court; or

(c) by way of discharge of a mortgage or charge; or

(d) by way of partition between co-proprietors; or

(e) by way of deed of arrangement between beneficiaries under a will or settlement; or

(f) which vests an interest in land in the personal representative of a deceased person; or

(g) which vests an interest in land in a trustee of the estate of a deceased person, a trustee in bankruptcy, or a newly appointed trustee under any instrument; or

(h) which vests an interest in land held by a company in a liquidator, administrator, receiver, receiver-manager or manager of the company; or

(i) which is without consideration and the purpose of which is to vest an interest in land in a person beneficially

entitled to the interest, under or by virtue of a will or intestacy or by way of gift; or

(j) by way of a personal insolvency agreement under the *Bankruptcy Act 1966* of the Commonwealth, or any Act of the Commonwealth passed amending, or in substitution for, that Act.

[Section- 172 amended: No. 18 of 2009 s. 48; No. 4 of 2023 s. 92.]

173. No improvements to be made to required land without Minister's approval

While a notice of intention is current in relation to land, a person must not cause the building or making of any improvement to the land to be commenced or continued except with the approval in writing of the Minister.

174. Minister's consent under s. 172 to transaction, Registrar of Titles may require evidence of

If an instrument relates to a transaction affecting land included in a current notice of intention, and the instrument is presented to the Registrar of Titles for registration, the Registrar must require the production of the consent in writing of the Minister, or such evidence as he or shethe Registrar thinks sufficient that section 172 does not apply to the transaction, and may refuse to register the instrument until that consent or evidence is produced.

[Section 174 amended: No. 4 of 2023 s. 92.]

175. Objections to proposed taking of interests in land

(1) When a notice of intention is issued —

(a) any person who is —

(i) the principal proprietor of land affected by the notice; or

(ii) an occupier of land affected by the notice; or

(iii) the holder of any mining, petroleum or geothermal energy rights in land affected by the notice,

and whose interest is affected by the proposal; or

(b) any management body whose management order will be affected by the proposal,

may, alone or jointly with any other person or body so qualified, serve on the Minister, at an address mentioned in the notice of intention, a written objection to the taking of interests in the land, not relating to compensation.

(2) An objection must be lodged within 60 days after the registration of the notice of intention or such further time as the Minister may allow.

(3) An objection must identify the land and specify the nature of the interest of the objector in the land, the address of the objector and the grounds of objection.

(4) The Minister must consider any objections and any other representations by the objectors.

(5) After considering the objections and representations, the Minister is to —

(a) determine that the notice of intention is to stand unchanged; or

(b) cancel or amend the notice of intention, or cancel the notice and substitute another notice of intention, in accordance with section 170(6).

(6) If a notice of intention is amended, or cancelled and another notice substituted, under subsection (5)(b), the amended or substituted notice is to be treated as a new notice of intention for the purpose of allowing objections under this section, unless —

(a) the changes to the notice of intention do not affect any interests in land apart from those of persons who have already objected; and

(b) each objector has agreed to the change in writing.

[Section 175 amended: No. 35 of 2007 s. 98(9).]

176. Proprietor may require acquiring authority to also take small remainders of land

(1) Subject to this section, if it is proposed to take, under this Part, all the interests in an area of land and the result of the taking would be that —

(a) the land taken is excised from a portion of land (the ***original portion***);

(b) the remainder is divided into non-contiguous portions, of which at least one has an area of less than 1 000 square metres (a ***small portion***),

the proprietors of the fee simple, a lease of Crown land or native title rights and interests in the original portion may require the acquiring authority to take any or all of the small portions in addition to the other land taken.

(2) This section does not apply if the original portion —

(a) is situated in land referred to in clause 37 of Schedule 9.3 to the *Local Government Act 1995*; or

(b) is built upon; or

(c) has an area of 4 000 square metres or less.

(3) If the proprietors referred to in subsection (1) also hold the same interest in other contiguous land with which a small portion referred to in that subsection may conveniently be amalgamated, the acquiring authority may, instead of taking the small portion, cause it to be amalgamated with the contiguous land.

177. Taking order, Minister's powers to make etc.

(1) If —

(a) a notice of intention has been registered in relation to land; and

(b) the Minister either —

(i) has received no objections from any proprietor or occupier within 60 days after the registration or within such further time as is allowed by the Minister; or

(ii) has determined that the objections received in that time do not warrant the cancellation, amendment or cancellation and substitution of the notice of intention; or

(iii) is satisfied that every objector concerned has consented in writing to the purchase or taking of the objector's interest,

the Minister may make a taking order consistent with the notice of intention.

(2) If a special Act has been passed authorising the construction of a railway, the Minister may make a taking order consistent with that Act.

(3) If an agreement has been concluded in accordance with section 168, the Minister may make a taking order in relation to the interest the subject of the agreement.

(4) The Minister, when making a taking order under this section, may also make such other orders under this Act as are necessary to give effect to the purpose of the taking.

(5) As soon as possible after the registration of the order, the Minister must —

(a) cause an extract from the order, in the approved form, to be published once in a daily newspaper circulating throughout the State; and

(b) cause a copy of the order to be given to the Director-General of Mines referred to in the *Mining Act 1978*; and

(c) cause a copy of the order together with forms for the claiming of compensation under Part 10 to be served on each proprietor and each occupier of the land and each holder of any mining, petroleum or geothermal energy rights in the land, or such of them as can with reasonable diligence be ascertained at the time of the making of the order, either personally or by ~~certified mail posted~~registered post (or any similar type of post that is prescribed) sent to their last known place of residence; and

(d) advise the persons mentioned in paragraph (c) of the procedures under Part 10 for compensation for interests taken, unless they have already been given that advice.

[Section 177 amended: No. 61 of 1998 s. 14; No. 35 of 2007 s. 98(10~~).]~~); No. 4 of 2023 s. 78.]

178. Taking order, content of

(1) A taking order must —

(a) identify the land affected by the order; and

(b) either —

(i) identify any registered or unregistered interest to be taken; or

(ii) specify that the land is taken, subject to any provision made under subsection (2)(a);

and

(c) specify that, subject to any provisions made under subsection (2)(d), any interest taken is to be held as Crown land in the name of the State of Western Australia; and

(d) designate appropriately any land or interests in land required for the purpose of the public work; and

(e) if the land, or interests in the land, required for the public work will be held by a person other than the Crown — specify any covenants in favour of the public work that will apply to the land or the interests; and

(f) if land affected by the order is not under the *Transfer of Land Act 1893* — provide that it will be registered under that Act.

(2) A taking order may, as necessary —

(a) provide that specified interests are to be preserved in land affected by the order;

(b) provide that any existing designation of the land is to be cancelled;

(c) vary an existing management order;

(d) provide that specified interests are to be disposed of or granted in land affected by the order to specified persons;

(e) provide that land will be excised from an existing portion or portions of land;

(f) provide as necessary for the cancellation, amendment or issue of certificates of Crown land or certificates of title.

(3) The interests which may be disposed of or granted under subsection (2)(d) include the fee simple, a lease of Crown land or any easement or obligation.

(4) A grant or disposition under subsection (2)(d) may be made to the acquiring authority or any other person.

(5) If it is proposed to dispose or grant an interest under subsection (2)(d) out of an interest held by the Crown before the taking order, the making of the order is subject to section 18.

(6) An easement granted under subsection (2)(d) may be specified as being subject to revocation without compensation on a breach of any of the conditions subject to which it was granted.

(7) The Minister may, by the same or a subsequent order, declare that the interest of any lessee or occupier of the land is to continue until a date specified in the order or uninterrupted until taken by further notice, and may declare that the continued interest is not to be considered to be in satisfaction or part satisfaction of compensation for the land.

(8) If the land affected by the taking order was occupied under section 183 or 186, the taking order may specify the date of actual occupation as the date of taking.

[Section 178 amended: No. 74 of 2003 s. 72(3).]

Subdivision 3 — Effect of taking order

179. Registration of taking order, effect of

On the registration of a taking order in relation to land —

(a) the order has effect according to its terms; and

(b) if the order provides that the land is taken — every registered and unregistered interest in the land not preserved under section 178(2)(a) is extinguished, and each person who formerly held such an interest has that holding converted into a claim for compensation under Part 10; and

(c) if the order does not provide that the land is taken —

(i) each interest declared by the order to be taken is extinguished and each person who formerly held such an interest has that holding converted into a claim for compensation under Part 10; and

(ii) every unregistered interest in the land inconsistent with the effect and purpose of the taking order is also extinguished to the extent of the inconsistency, and each person who formerly held such an interest has that part of the holding which was extinguished converted into a claim for compensation under Part 10.

180. Taking order may be annulled or amended

(1) A taking order may, at any time within 90 days after its registration, be annulled or amended by the registration of an order to that effect.

(1a) As soon as possible after the registration of an order under subsection (1) the Minister must cause a copy of the order to be published once in a daily newspaper circulating throughout the State.

(2) Section 177(5)(b) and (c) apply to the order annulling or amending the taking order as if it were a taking order.

(3) Subject to this section —

(a) an order so annulled; and

(b) if an order is so amended — any part of the earlier order that is inconsistent with the order as amended,

is void *ab initio*.

(4) No person is to be prejudiced in respect of any interest in the land or in any right arising from such an interest by reason of having, in consequence of or in reliance on the earlier order, done or omitted any act or thing, or failed to enforce or act upon any right, or comply with any obligation in respect of the interest or right.

(5) Except as provided in section 181, no person has any right of action or claim against the Crown, the Minister, or an acquiring

authority for anything done in good faith done under the taking order before it was annulled or amended.

(6) This section does not limit the power of the Minister to take, by any subsequent order, any interest in the land described in any order annulled or amended.

[Section 180 amended: No. 61 of 1998 s. 15.]

181. Compensation if taking order annulled or amended

(1) When a taking order, or an amended taking order, is annulled or amended, any claimant who would otherwise have been entitled to compensation is entitled to compensation for reasonable costs incurred, in relation to the taking, up to and including the date of taking and, if the land has been entered under Division 4, for actual damage to the land.

(2) A claim under this section must be made to the acquiring authority within 60 days after the date of registration of the annulling or amending order, or within such longer period as the Minister may allow.

(3) Compensation under this section is to be paid by the acquiring authority.

(4) If the parties fail to agree on the amount of the compensation, the amount may be determined in accordance with Part 10.

Division 4 — Entry on to land

182. Entry for feasibility study

(1) If it appears to the Minister that it may be necessary to use any land for a proposed public work for which the Minister is authorised to take interests in land, the Minister may authorise a person —

(a) to enter on that land; and

(b) to do anything necessary in order to study the feasibility of the proposed public work.

(2) The Minister or person authorised must, before entering on any land under this section, give to the principal proprietor, the occupier, and to the holders of any native title rights and interests, not less than 30 days notice in writing, giving a description of the area of the land to be entered upon, a description of what is proposed to be done for the feasibility study, and the time that it is expected to take.

183. Land for railway identified in special Act, entry of etc.

(1) If a special Act has been passed authorising the construction of a railway, the Minister may authorise a person to enter on the land between the authorised limits of deviation and do anything that under the special Act or the *Public Works Act 1902* is authorised to be done for the purposes of constructing the railway and any ancillary public works, in all respects as if the necessary taking order had been made for the purposes of the railway.

(2) The Minister or person authorised must, as far as is practicable, before entering on any land under this section —

(a) give to the principal proprietor, the occupier, and to the holders of any native title rights and interests, not less than 7 days notice in writing, giving a description of the area of the land to be entered on, a description of what is proposed to be done, and the time that it is expected to take; and

(b) advise the persons mentioned in paragraph (a) of the effect of this section and the procedures under this Part and Part 10 for the taking of land, payment of purchase money or compensation for land taken, rights of appeal or review and rights as to the future disposition of land taken by agreement or compulsorily taken, unless they have already been given that advice.

[Section 183 amended: No. 31 of 2003 s. 167(2); No. 55 of 2004 s. 567.]

184. Land in notice of intention, entry of for inspection, surveys etc.

(1) At any time after the registration of a notice of intention, a person authorised in writing by the Minister may at all reasonable times enter on land included in the notice for the purpose of inspecting the land or making an assessment of compensation payable for the taking of interests in the land.

(2) At any time after the registration of a notice of intention, a person authorised in writing by the Minister may at all reasonable times enter on land included in the notice and do anything necessary or convenient for the surveying of the land for the purposes of the public work.

(3) The Minister or person authorised must, as far as is practicable, before entering on any land under this section give to the principal proprietor, the occupier, and to the holders of any native title rights and interests, not less than 48 hours notice in writing, describing the area of land to be entered on and the purpose of the entry.

185. Land may be occupied temporarily to construct etc. public work

(1) The Minister may authorise a person to occupy and use any land temporarily for the purpose of constructing or repairing any public work, and a person so authorised may —

(a) take stone, gravel, earth and other materials from the land; and

(b) deposit any such material on the land; and

(c) make and use temporary roads; and

(d) manufacture bricks or other materials; and

(e) erect temporary workshops, sheds and other buildings.

(2) Property in anything deposited, made or erected under this section remains with the Minister.

(3) Subject to subsection (4), the Minister or person authorised must, before the land is used or occupied under this section, give to the principal proprietor or occupier of the land, and to the holders of any native title rights and interests in the land, not less than 7 days notice in writing, and must state in the notice the use proposed to be made of the land and an approximate period during which the use is expected to continue.

(4) If the Minister is satisfied that the situation is sufficiently urgent, the notice period may be shortened or the land may be occupied before notification has been given.

186. Entry etc. before land taken in certain circumstances

(1) If the Minister is satisfied that —

(a) it is necessary to use any land for a proposed public work for which the Minister is authorised to take interests in land; and

(b) because of the urgency of the work or the difficulty in tracing the proprietors of the land, it is unreasonable or impractical to delay entry onto the land until the land has been taken in accordance with this Part,

the Minister may authorise a person —

(c) to enter on the land; and

(d) to do anything necessary in order to study the feasibility of the proposed public work; and

(e) to do anything necessary as preliminary or ancillary to the undertaking, constructing, or providing of the public work; and

(f) to carry out the public work,

in all respects as if the necessary taking order had been made for the purposes of the public work.

(2) This section applies whether or not a notice of intention has been issued in relation to the land, and whether or not the land has been entered on under any other section.

(3) The Minister or person authorised must, as far as is practicable, before entering on any land under this section —

(a) give to the principal proprietor, the occupier, and to the holders of any native title rights and interests, not less than 7 days notice in writing, giving a description of the area of the land to be entered upon, a description of what is proposed to be done, and the time that it is expected to take; and

(b) advise the persons mentioned in paragraph (a) of the effect of this section and the procedures under this Part and Part 10 for the taking of land, payment of purchase money or compensation for land taken, rights of appeal or review and rights as to the future disposition of land taken by agreement or compulsorily taken, unless they have already been given that advice.

(4) As soon as practicable after any land has been entered on under this section, the Minister must determine the interests in the land which it is necessary to take.

(5) On the making of a determination under subsection (4), the Minister may make an appropriate taking order in relation to the land as if section 177 had been satisfied, and as if the determination were a notice of intention.

[Section 186 amended: No. 55 of 2004 s. 567.]

Division 5 — Use and disposal of land designated for a public work

187. Interest in land not required for public work may have designation changed or cancelled

(1) Subject to this section, if an interest in land has been designated for a public work, and the Minister is satisfied that the interest is

not required for the public work, or is not exclusively required for the public work, the Minister may by order —

(a) designate the interest, or a part of it, for another public work; or

(b) cancel the designation.

(2) The Minister must not proceed under this section in relation to land to which section 189 or 190 applies unless those sections have been complied with and all persons entitled to exercise an option to purchase under those sections have declined to do so.

(3) If a designation of an interest in land is cancelled in good faith under this section —

(a) neither the cancellation nor any subsequent transaction affecting the interest is invalidated by a failure to comply with section 189 or 190; and

(b) no person has any right of action or claim against the Crown, the Minister, or an acquiring authority in relation to the cancellation or disposal.

188. Transactions affecting designated interests in land, application of proceeds of

(1) Subject to any other written law, if an interest in land has been designated for a public work under this Part, and a transaction is entered into which affects the interest, then any proceeds of the transaction which derive from that interest are to be paid into the fund out of which the payment for the public work was made, or, if no such fund can be identified, into the Consolidated Account.

(2) If the designation is cancelled and the interest is held at the time of the cancellation by a person other than the Crown, this section continues to apply to any transaction affecting the interest up to and including the disposal of the interest by the person.

[Section 188 amended: No. 77 of 2006 s. 4.]

189. Interest in land less than fee simple not required for public work, landowner to get option to purchase

(1) If an interest in land less than the fee simple has been designated for a public work, and the Minister is satisfied that the interest is not required for the public work, the holding authority must notify the holder of the fee simple and grant the holder an option to purchase the interest.

(2) The purchase price under the option is to be the current market value of the interest as determined by the holding authority on the advice of the Valuer-General.

190. Fee simple in land not required for public work, previous owner etc. entitled to option to purchase

(1) This section applies if —

(a) the fee simple in land was taken or resumed without agreement under this or another Act and either —

(i) the taking or resumption was done less than 10 years previously; or

(ii) the land has not been used for any public work;

and

(b) the Minister proposes to cancel the designation of the fee simple under section 187, or to designate it for the purpose of a public work other than one ancillary or incidental to the purpose for which it was originally taken; and

(c) the land is not a small portion taken at the request of the holder under section 176; and

(d) the land has not been substantially improved since the taking; and

(e) either —

(i) the land as a separate lot complies with the requirements of the *Planning and Development Act 2005*; or

(ii) the land can be amalgamated with adjoining land whose fee simple is owned by a qualified person in such a way as to comply with those requirements.

(2) For the purposes of this section, a person is ***qualified*** if the person —

(a) held the fee simple in the land immediately before the taking; or

(b) is the legal representative of a deceased individual who held the fee simple in the land immediately before the taking.

(3) If this section applies, the holding authority must —

(a) cause a notice to be published once in a daily newspaper circulating throughout the State to the effect that the land is no longer required for the purposes of the work for which it was taken; and

(b) cause a copy of the notice to be served on each person who appears to it to be qualified, either personally or by ~~certified mail posted~~registered post (or any similar type of post that is prescribed) sent, in the case of an individual, to the person's last known place of abode, or, in the case of a corporation, to the corporation's registered office.

(4) The service of a notice under subsection (3) does not imply an acknowledgment by the holding authority of any right in the person or persons to be granted an option under this section.

(5) A qualified person who wishes to be given an option to purchase the fee simple must apply in writing to the holding authority within 30 days, or such extended period as the

Minister may approve, after the publication of the notice referred to in subsection (3).

(6) The holding authority must grant an option to purchase the fee simple to any applicant that the authority is satisfied is qualified, and notify any applicant of its decision within 60 days after the end of the period or extended period referred to in subsection (5).

(7) The purchase price under the option is to be the current market value of the fee simple as determined by the holding authority on the advice of the Valuer-General.

(8) If more than one qualified person applies, the holding authority may determine such order or priority for the exercise of options granted as it thinks reasonable.

(9) An option is to be granted on such terms and conditions as the holding authority thinks reasonable and may include a condition prohibiting the option holder from assigning the option.

(10) A person aggrieved by a decision of the holding authority in refusing to grant an option under this section, in ordering the priorities of options, or in setting the purchase price or other terms and conditions of an option may lodge an appeal with the Minister under Part 3.

(11) An appeal under subsection (10) must be lodged within 21 days after receipt of the notice of the decision concerned, or such longer period as the Minister in special circumstances allows.

[Section 190 amended: No. 38 of 2005 s. ~~11~~11; No. 4 of 2023 s. 79.]

191. Person who would be entitled to s. 189 or 190 option may require Minister to say if interest is required for public work

(1) Subject to this section, if an interest in land designated for the purpose of a public work is not being used for the work, a

person who would, if section 189 or 190 applied, be entitled to an option to purchase under that section, may by notice in writing require the Minister to determine whether the interest is required for the purpose of the public work.

(2) A person who obtains a determination under this section is not entitled to require another determination in respect of that interest for a period of 12 months after being notified of the determination.

(3) If the Minister determines that the interest is not required for the public work, the Minister must notify the holding authority, and the authority must proceed in accordance with section 189 or 190, as appropriate.

192. Land not presently wanted etc. for public work may be leased

(1) If —

(a) any interest in land has been designated for a public work; and

(b) the holding authority is satisfied that the land is not presently required for the public work, or is not exclusively required for the public work,

the authority may grant a lease in the interest or any suitable part of it.

(2) This section does not derogate from Part 6.

(3) The lease is to be on such terms as the holding authority thinks fit.

(4) A lease granted under this section must not be mortgaged, assigned or charged for any purpose unless the consent in writing of the holding authority has been first obtained.

193. Easement over land designated for public work, grant of

(1) If an interest in land has been designated for a public work, whether or not it is held by the Crown, the Minister may grant to any person any easement in relation to the interest subject to such conditions and payment of such consideration to the holder of the interest as the Minister thinks fit.

(2) An easement granted under this section may be granted subject to revocation, without compensation, at any time when the Minister requires it, or on a breach of any of the conditions under which it was granted.

194. Timber, stone etc. on land designated for public work, sale of etc.

(1) If an interest in land designated for the purpose of a public work is subject to a management order, the Minister may authorise the management body to sell or to contract to sell and remove any timber, stone, mineral, metal, or other substance upon or under the land, to the extent of the interest, for the work or for another public work.

(2) This section does not limit the liability of the management body for damage to persons or property by reason of the removal of the timber, stone, mineral, metal, or other substance.

Division 6 — General provisions

195. Easement in gross in favour of State etc., creation of etc.

It is possible, and is deemed always to have been possible —

(a) to create in favour of the State of Western Australia or in favour of a State instrumentality, statutory body corporate or local government, an easement without a dominant tenement; and

(b) to annex to or make appurtenant to an easement, another easement or the benefit of a restriction as to the user of land.

196. Public access easement, creation of etc.

(1) An easement created under section 195 may be specified to be a public access easement.

(2) A public access easement is a right of way for the use and benefit of the public at large.

(3) An interest in land cannot be taken under this Part for the purpose only of creating a public access easement.

(4) Subject to subsection (3), a public access easement is a public work for the purposes of this Part and Part 10.

(5) A public access easement may be limited in any way, including, for example —

(a) limitations on use by vehicles;

(b) limitations by time, so that the right may only be exercised between particular hours, at particular times of year, or on the occurrence of particular events.

(6) A public access easement is not a public right of way for the purposes of section 68 of the *Transfer of Land Act 1893*.

(7) For the purposes of the *Occupiers' Liability Act 1985*, the Crown is not, and a local government is not, an occupier of the land over which a public access easement is granted.

(8) Any covenants in a deed creating a public access easement are binding on successors in title to the covenantor, unless the deed provides otherwise.

(9) A public access easement in favour of the State of Western Australia may be varied or surrendered on behalf of the State by a deed made by the Minister responsible for the administration of the *Planning and Development Act 2005*.

[Section 196 amended: No. 38 of 2005 s. 12.]

197. Person refusing to give up possession etc. of land, Minister's powers in case of

(1) If the Minister is authorised because of a taking order or under Division 4 to enter on, take possession of or use any land, and the proprietor or occupier of the land, or any other person, refuses to give up possession or hinders the Minister or any person appointed in writing by ~~him or her~~the Minister, the Minister may issue a warrant to the sheriff to deliver possession of the land to the person appointed in the warrant to receive possession, and, on receipt of the warrant, the sheriff must deliver possession of any such land accordingly.

(2) The costs of the issue and execution of such a warrant, to be determined by the sheriff, must be paid by the person refusing to give possession, and —

(a) if any compensation is payable to the person, the amount of the costs are to be deducted from the compensation; and

(b) any excess costs remaining after the application of paragraph (a) which are not paid by the person on demand are to be levied by distress upon the goods and chattels of the person.

(3) A warrant must be issued by any Justice of the Peace for the purposes of subsection (2)(b) upon application by any person appointed for the purpose by the Minister.

[Section 197 amended: No. 4 of 2023 s. 92.]

198. Fences, removal of by acquiring authority restricted

Nothing in this Act permits an acquiring authority to remove any fences without making adequate provision for the security of the land fenced, except by agreement.

199. Obstructing workers, causing damage etc., offence etc.

(1) A person must not wilfully and without lawful excuse —

(a) obstruct or interfere with any engineer, architect, surveyor, overseer, ~~workman~~worker, or other person in the performance of any duty or in doing any work which ~~he or she has~~they have authority to do under this Part; or

(b) obstruct, interfere with, damage, destroy or remove anything constructed, provided or done, under this Part; or

(c) damage, destroy or remove any fence on land entered on or occupied under this Part.

Penalty~~: $1~~ for this subsection: a fine of $2 000.

(2) The cost of any repair or reinstatement or the clearing of any obstruction necessitated by an action referred to in subsection (1) is recoverable by the Minister from the person in a court of competent jurisdiction.

[Section 199 amended: No. 4 of 2023 s. 91 and 92.]

200. Compulsory acquisition in progress at 30 Mar 1998 etc., transitional provisions for

(1) If, immediately before the appointed day, a notice of intention under section 17(2)(b) of the *Public Works Act 1902* was current in relation to any land —

(a) that Act, as it stood immediately before the appointed day, continues to apply in relation to the land until the end of the period of 30 days referred to in section 17(2)(e) of that Act; and

(b) if, at the end of that period, the requirements of that provision have been fulfilled, the Minister may make a taking order consistent with the notice of intention as if it had been a notice of intention issued under this Part; and

(c) a taking order made under paragraph (b) is to be treated as having been duly made under this Part, and the rights of any person, to compensation and otherwise, arising under this Part and Part 10 are to be assessed as if any act done under that Act had been duly done under this Act.

(2) Subject to subsection (1), if, immediately before the appointed day, a procedure had been begun but not completed under a provision of the *Public Works Act 1902* (the ***first Act***) subsequently amended or repealed by the *Acts Amendment (Land Administration) Act 1997* (the ***second Act***), the procedure may be continued and completed as if the first Act had not been amended by the second Act.

(3) Without limiting subsection (2), if —

(a) any proceedings for relief in respect of any alleged act or omission done or omitted by or on behalf of the Crown in respect of any land compulsorily taken or resumed under the first Act (including an appeal from a decision made in any such proceedings) were pending immediately before the appointed day; and

(b) any relief sought in those proceedings is granted,

the person who instituted those proceedings may make any application, or take any other action, under the first Act in respect of that land as if the first Act had not been amended by the second Act, and the first Act as it existed before its amendment by the second Act applies to and in relation to any such application or other action.

(4) This section is in addition to, and does not derogate from the application to the first Act, the second Act or this Act of, the *Interpretation Act 1984*.

201. Delegations in force at 30 Mar 1998, preservation of

If a delegation was made under section 5A or 5B of the *Public Works Act 1902* and is in force immediately before the appointed day, then, insofar as it delegates powers or duties which are essentially the same as powers or duties which —

(a) could be exercised or performed under this Part or Part 10; and

(b) could be delegated to those persons under section 159 or 160,

a delegation of those powers or duties is deemed to have been duly made under this Part to those delegates.

Part 10 — Compensation

Division 1 — Persons entitled to compensation

202. Owners of interests in land taken, entitlement of

(1) Every person having any interest in land which is taken under Part 9 is entitled, subject to this Part, to compensation for the interest from the acquiring authority.

(2) A person whose interest in the land —

(a) is not a native title interest; and

(b) is not duly registered or notified in the Department or Registry of Deeds,

is not entitled to any compensation under this section if —

(c) another person has applied for and obtained compensation in respect of the same land; and

(d) at the time the compensation was awarded, the acquiring authority had not received written notice of the unregistered interest from the person compensated or some other person.

(3) No compensation is payable under this section for land transferred under section 75 other than in respect of —

(a) lawful improvements made to the land since the transfer; or

(b) consideration paid for the transfer of the land.

(4) In subsection (2)(b) —

Department means the department of the Public Service principally assisting in the administration of the TLA.

[Section 202 amended: No. 28 of 2006 s. 378.]

203. Person suffering damage from entry to land, entitlement of

(1) A person holding any interest in any land, or lawfully occupying the land, who suffers damage by reason of any entry on or occupation of the land, or the removal of any material, under Division 4 of Part 9, is entitled, subject to this Part, to compensation for the damage from the acquiring authority if the land is not subsequently taken.

(2) No compensation is payable under this section in respect of any entry or occupation under Division 4 of Part 9 unless some person having an interest in the land gives notice in writing to the acquiring authority during the entry or occupation concerned that the person will require compensation.

(3) Compensation paid under this section in respect of any land must not exceed the amount that would have been payable in respect of the land had the land been taken.

204. Management body, entitlement of for loss of use of structures etc.

(1) If —

(a) a taking order includes land subject to a management order and the management body is not ~~an~~a State instrumentality~~ of the State~~; and

(b) as a result of the order, the management body will lose the use of structures erected or improvements made by the management body on the land in accordance with the terms of the management order,

the management body is entitled to compensation from the acquiring authority for the depreciated value of those structures and improvements.

(2) A management body is not otherwise entitled to compensation for the revocation or variation of the management order by the taking order.

[Section 204 amended: No. 4 of 2023 s. 80.]

205. Mine, compensation for damage to etc.

If an interest in land taken under Part 9 is held under any Act relating to the use of land for mining purposes, the holder of the interest is only entitled to claim compensation for actual loss sustained by reason of the taking through damage to a mine on the land, or the works connected with a mine.

206. Limitation on compensation if taking done under Part 9 could have been done under another Act

(1) If any interest in land is taken under Part 9, and the interest could have been taken or resumed for the same purpose under any other written law or instrument, no compensation is payable under section 202 which would not have been payable if the land had been taken or resumed under that other written law or instrument.

(2) If an interest in land taken under Part 9 exceeds the interest which could have been taken or resumed under the other written law or instrument, subsection (1) does not apply in respect of the excess.

(3) If any act is done under Part 9, and the act could have been done under another written law or instrument, no compensation is payable under section 203 which would not have been payable if the act had been done under that other written law or instrument.

Division 2 — The claim

207. Time limit for making claim for compensation

(1) Unless a direction for the hearing of a claim is made by the State Administrative Tribunal under section 210, a person is not entitled to make a claim for compensation under this Part more than 6 months after —

(a) the registration of the relevant taking order, for a claim under section 202 or 204; or

(b) the commission of the acts complained of, for a claim for compensation under section 203.

(2) The time limit (whether it has expired or not) under this section may, on the application of a person who wishes to make a claim, be extended if the Minister is satisfied that the application is reasonable and made in good faith.

(3) When the time limit, or the time limit as extended, has expired, no action or proceeding lies against the acquiring authority in respect of any claim for compensation.

[Section 207 amended: No. 55 of 2004 s. 548.]

208. Who can claim compensation

(1) A claim for compensation may be made by any person entitled to compensation under this Part, or by the person's executor or administrator, whether or not the person has the power to sell and convey the interest on which the right to compensation depends.

(2) Any claim on behalf of beneficiaries of trusts, wards or incapable persons may be made by their trustees or guardians.

209. Principal Registrar to be guardian etc. in certain cases

In the case of an infant or incapable person, not having a guardian within the State, and known to the Minister or acquiring authority, the Principal Registrar of the Supreme Court is deemed, for the purposes of this Part, to be the legal guardian of the person.

210. Potential claimant absent from State or an infant etc., procedure in case of

(1) If a claim is not made within the time limit and it appears to the acquiring authority that a person entitled to claim compensation is absent from the State, or an infant or an incapable person, the

authority must offer an amount in compensation and apply to the State Administrative Tribunal for a direction.

(2) The State Administrative Tribunal may direct either that the offer is to be accepted on behalf of the claimant or that the claim is to be heard and determined by the State Administrative Tribunal.

(3) If the State Administrative Tribunal directs that the claim is to be heard by it, it is to appoint an assessor on behalf of the absent person.

(4) The State Administrative Tribunal may proceed in the examination of the claim, as in ordinary cases where the claimant is present.

(5) The Principal Registrar of the Supreme Court, or some person nominated by ~~him or her~~the Principal Registrar, is to represent the person entitled to claim, and may act on the person's behalf in all matters relating to the claim or the hearing.

(6) Any moneys payable as compensation are to be paid into the Supreme Court, and are to remain there subject to section 249.

[Section 210 amended: No. 55 of 2004 s. 549, 568 and 569; No. 4 of 2023 s. 92.]

211. Content and service of claim

(1) A claim for compensation under this Part must be in an approved form, stating —

(a) the particulars identifying the land in respect of which the claim is made; and

(b) the nature and particulars of the claimant's interest in the land; and

(c) if the land or the interest is charged, leased, or subject to any easement — particulars of the charge, lease, or easement; and

(d) each matter on account of which compensation is claimed, with particulars of the nature and extent of the claim; and

(e) the claimant's full name and address for service.

(2) The claim must be served on the acquiring authority and accompanied by —

(a) all deeds and documents necessary to establish the claimant's title to the interest which are in the claimant's custody, possession, or power; and

(b) an abstract or certified copy of all such deeds or documents as are not in the claimant's custody, possession, or power.

(3) A reference in this Part to the serving of a claim includes a reference to the serving of the documents referred to in subsection (2).

212. Non-monetary compensation, requests for

(1) A claimant may request that the claim be satisfied, in whole or in part, by compensation in a form other than money (for example by the transfer of property or the provision of goods or services).

(2) If such a request is made the acquiring authority must —

(a) consider the request; and

(b) negotiate in good faith in relation to it.

213. Service of claim etc., manner of

A claim or other document required to be served on an acquiring authority under this Act may be served —

(a) if a notice of intention has been issued, by —

(i) delivery at the office of that authority specified in the notice of intention; or

~~(ii) certified mail~~ (ii) registered post (or any similar type of post that is prescribed) addressed to the acquiring authority at that office;

or

(b) if no notice of intention has been issued, by —

(i) delivery at the Department; or

~~(ii) certified mail~~ (ii) registered post (or any similar type of post that is prescribed) addressed to the Minister at the Department;

or

(c) in any other manner specified in a notice to the claimant.

[Section 213 amended: No. 4 of 2023 s. 81.]

214. Acquiring authority may require further particulars

(1) If the claimant does not give full particulars of any matter mentioned in section 211(1), the acquiring authority may, by notice in writing, require ~~him or her~~the claimant to furnish the particulars within 30 days after receiving the notice.

(2) If the particulars required under this section are not furnished within 60 days after the claimant receives the notice, or such extended time as the State Administrative Tribunal constituted by a judicial member may, on an application under this subsection, allow, the claim is absolutely barred.

[Section 214 amended: No. 55 of 2004 s. 550; No. 4 of 2023 s. 92.]

215. Time limit for acquiring authority to dispute title

(1) If the acquiring authority disputes a claimant's title to the interest in land, or to some part of the interest, it must serve on the claimant a notice in an approved form within 60 days after the service of the claim, or, if further particulars were demanded, within 60 days after the particulars were furnished.

(2) If no notice disputing the title of the claimant is served in accordance with this section, the acquiring authority is deemed to have admitted the claimant's title.

216. Claimant whose title is disputed may apply to Supreme Court

(1) A claimant may, on being served with a notice disputing ~~his or her~~the claimant's title to the whole or any part of the interest in land, after giving 8 days notice in writing to the acquiring authority, apply to a judge of the Supreme Court for an order —

(a) for a trial of any issues of fact the finding of which will be necessary to determine the question of title; and

(b) that any question of law arising from the dispute as to ~~his or her~~the claimant's title to the interest may be set down for argument in order to obtain the opinion of the Court.

(2) A trial of the issues of fact is to be conducted and judgment given as upon the trial of the issues in a cause and with the same effect, and on an argument as to a question of law, a declaratory judgment may be drawn up in the same manner as a declaratory judgment in a cause and with the same effect.

(3) In a trial or argument under this section, the claimant may not, without the acquiring authority's consent, adduce any deed or document in evidence of title which was not furnished with the claim or the further particulars, or included in the abstract accompanying the claim or particulars.

[Section 216 amended: No. 4 of 2023 s. 92.]

Division 3 — Dealing with the claim

217. Offer of compensation if title not in dispute, when to be made

(1) If a claim is made under this Part and the acquiring authority does not dispute the claimant's title to the interest in land, or

disputes it only in part, the authority must, within 90 days after the service of the claim or, if further particulars were required, within 90 days after the particulars were furnished, cause the claim to be examined, and a report made as to the value of the interest as to which no dispute exists and as to the damage sustained by the claimant by reason of the taking.

(2) If a judgment of the Supreme Court under section 216 confirms, in whole or in part, a claimant's title to an interest in land under dispute, the authority must, within 90 days after the judgment of the Court, cause the claim to be examined, and a report made as to the value of the interest in land in relation to which the claimant's title was confirmed and as to the damage sustained by the claimant by reason of the taking.

(3) As soon as possible after a report under subsection (1) or (2) is received by the acquiring authority, it must serve on the claimant in an approved form an offer of compensation with respect to the interest in the land or the part of the interest in question.

(4) The offer must include a statement of the effect of section 219.

(5) An offer under this section is an admission by the authority of the claimant's title to the interest in land in respect of which it is made.

218. Claim and offer, amending

At any time before a claim for compensation is settled in full, if proceedings for determination of the amount of compensation have not been commenced in any court or before the State Administrative Tribunal, the claimant may with notice to the acquiring authority amend the claim only as to the amount claimed and the authority may with notice to the claimant amend the offer of compensation.

[Section 218 amended: No. 55 of 2004 s. 551.]

219. Rejection of offer, time limit for; effect of not rejecting offer

(1) A claimant who wishes to reject an offer or amended offer of compensation must serve on the acquiring authority, within 60 days after service of the offer or amended offer, a notice in an approved form rejecting the offer.

(2) If notice of rejection is not given within that time, the offer or amended offer, as the case may be, is deemed to have been accepted.

220. Rejected offer, how compensation determined in case of

If a notice rejecting an offer or amended offer of compensation is served on an acquiring authority, the compensation payable to the claimant may be determined by any one of the following methods —

(a) by agreement between the acquiring authority and the claimant;

(b) by an action for compensation by the claimant against the acquiring authority in accordance with this Part;

(c) by reference of the claim to the State Administrative Tribunal in accordance with this Part.

[Section 220 amended: No. 55 of 2004 s. 569.]

221. If offer not made within time limit, claimant may commence proceedings

(1) If an acquiring authority fails to serve on a claimant an offer of compensation within 120 days after the relevant day, the claimant may either —

(a) institute an action for compensation against the acquiring authority; or

(b) refer the claim for the compensation to the State Administrative Tribunal.

(2) For the purposes of this section, the relevant day is —

(a) if no notice disputing the claim was served — the latest of —

(i) the day of service of the claim; or

(ii) the day of service of any amendment to the claim; or

(iii) the day of compliance with any requirement for further particulars;

or

(b) if the title of claimant was disputed and the Supreme Court upheld the claimant's title in whole or in part under section 216 — the day of the judgment.

[Section 221 amended: No. 55 of 2004 s. 569.]

222. Claimant failing to commence proceedings after rejecting offer

(1) If a claimant —

(a) rejects an offer or amended offer in accordance with section 219; and

(b) does not, within 6 months after service of the notice of rejection, institute an action for compensation against the acquiring authority or refer the claim for compensation to the State Administrative Tribunal,

the acquiring authority may, after giving 30 days notice to the claimant, apply to the State Administrative Tribunal for a direction.

(2) The State Administrative Tribunal may direct either that the offer is to be accepted by the claimant or that the claim is to be heard and determined by the State Administrative Tribunal.

(3) An application must be accompanied by the rejected offer and the claim for compensation.

[(4) deleted]

(5) If the State Administrative Tribunal determines that the claim is to be heard by it and the claimant fails to make a valid appointment of an assessor, the President of the State Administrative Tribunal may, in specifying who is to constitute the Tribunal, choose any consenting person as if the person had been appointed as an assessor by the claimant.

(6) If the claimant, after due notice, fails to attend the hearing, the Principal Registrar of the Supreme Court, or some person nominated by ~~him or her~~the Principal Registrar, is to represent the claimant, and may act on the claimant's behalf in all matters relating to the claim or the hearing.

(7) Any moneys payable as compensation are to be paid into the Supreme Court, and are to remain there subject to section 249.

[Section 222 amended: No. 55 of 2004 s. 552, 568 and 569; No. 4 of 2023 s. 92.]

223. Court action for compensation, commencing and procedure on

(1) A claimant may not commence or maintain an action for compensation except as provided in section 220 or 221.

(2) A claimant may not commence proceedings unless ~~he or she~~the claimant has given the acquiring authority 30 days notice.

(3) If a person is entitled to bring an action for compensation under this Part, the action may be commenced and maintained in a court of competent jurisdiction and is to be heard and determined in the same manner as ordinary actions, with ordinary rights of appeal in regard to the amount of compensation awarded or to any question of law or fact or of mixed law and fact, except that no question is to be determined by a jury.

(4) If an action for compensation has been instituted in respect of the taking of an interest in any portion of land, the court may, on the application of the defendant, by order direct any other

person claiming compensation in respect of the taking of any interest in that portion of land, or who appears to have had, at the date of the taking, an interest in that portion of land, to join as a plaintiff in the action within a time specified in the order.

(5) If a person so ordered fails to join as a plaintiff in the action within the time specified in the order, ~~he or she~~the person is absolutely debarred thereafter from instituting an action for compensation against the defendant or from referring to the State Administrative Tribunal any claim for compensation in respect of that portion of land.

(6) If, because of the joinder of a new plaintiff or for any other reason, the total compensation claimed in an action for compensation exceeds the jurisdiction of the court concerned —

(a) that court is to refrain from proceeding further with the action; and

(b) the action may, on application by any party to a court of competent jurisdiction, be removed to that court and is to proceed in that court as if it had been instituted in that court.

(7) If the title of the claimant to an interest or part of an interest is being disputed, the proceedings under this section, unless the claimant admits the objection to ~~his or her~~the claimant's title, are to be adjourned pending the judgment of the Supreme Court on that issue under section 216.

(8) On the trial of the action, the court is to —

(a) determine the amount of compensation payable by the defendant to the plaintiff in respect of the taking of the interest in land, having regard solely to the provisions of this Part and in particular to the matters prescribed in Division 5 and section 256; and

(b) if 2 or more persons are entitled to share the compensation — determine the amount payable to each person and the manner in which it is to be paid.

(9) The costs of the action are at the discretion of the court.

[Section 223 amended: No. 55 of 2004 s. 569; No. 4 of 2023 s. 92.]

224. SAT claim for compensation, referring and procedure on

(1) A claimant who rejects an offer and wishes to refer ~~his or her~~their claim to the State Administrative Tribunal under section 220 must, with or after the service of the notice rejecting the offer, serve on the acquiring authority notice in an approved form of the appointment of an assessor together with copies of the assessor's consent and declaration.

(2) A claimant who wishes to refer ~~his or her~~their claim to the State Administrative Tribunal under section 221 must serve on the acquiring authority notice in an approved form of the appointment of an assessor together with copies of the assessor's consent and declaration.

(3) Within 30 days after being served with a notice of the appointment of an assessor, the acquiring authority must —

(a) appoint an assessor and serve on the claimant a copy of the appointment in an approved form; or

(b) serve on the claimant an offer of compensation, or, if an offer has already been made, an amendment to the offer increasing the amount of compensation offered.

(4) If the acquiring authority has not complied with subsection (3) within 30 days after being served with the notice of the appointment of an assessor by the claimant, the claimant may request the President of the State Administrative Tribunal, in specifying who is to constitute the Tribunal for the purpose of determining the claim, to choose a consenting person as if the person had been appointed as an assessor by the acquiring authority and the President is to act accordingly, and notify the authority and the claimant.

(5) When either —

(a) assessors have been appointed by or on behalf of both the claimant and the acquiring authority; or

(b) an agreement under section 228 has been executed,

the President of the State Administrative Tribunal is to specify who is to constitute the Tribunal for the purpose of determining the amount of compensation to be paid.

(5a) For the purposes of subsection (5)(a), the claimant or the acquiring authority is to be regarded as having appointed a person as an assessor if circumstances have arisen in which the President of the State Administrative Tribunal may, in specifying who is to constitute the Tribunal, choose any consenting person as if the person had been appointed as an assessor by the claimant or the acquiring authority, as the case requires.

(6) Upon receiving notice of the appointment of an assessor by the acquiring authority or notice that the President of the State Administrative Tribunal has chosen a person as if the person had been appointed as an assessor by the acquiring authority, the claimant must at once file a copy of the claim and of all notices and other particulars in the State Administrative Tribunal.

(7) If the offer is for part only of the interest in land taken, the title to the rest being disputed, the assessment of the compensation, unless the claimant admits the objections to ~~his or her~~the claimant's title, is to be adjourned pending the judgment of the Court under section 216.

[Section 224 amended: No. 55 of 2004 s. 553 and 569; No. 4 of 2023 s. 92.]

225. Assessor's consent to act required etc.

(1) No appointment of an assessor is valid unless the person appointed signs a consent and declaration in approved form.

(2) A consent and declaration must be filed in the State Administrative Tribunal, and a copy appended to the notice of appointment of the assessor.

[Section 225 amended: No. 55 of 2004 s. 554.]

Division 4 — The State Administrative Tribunal

[Heading amended: No. 55 of 2004 s. 569.]

226. Constitution of SAT for compensation claims

(1) Except as otherwise stated in this section, when the State Administrative Tribunal is dealing with a claim for compensation under this Part, it is to be constituted by —

(a) a judicial member or a senior member who is a qualified person; and

(b) the person appointed as an assessor by the claimant; and

(c) the person appointed as an assessor by the acquiring authority.

(2) If the claimant and the acquiring authority agree in writing, the State Administrative Tribunal may be constituted solely by a judicial member or a senior member who is a qualified person.

(3) The agreement may be limited according to who is to be the member by whom the State Administrative Tribunal is to be constituted.

(4) When dealing with an application under section 222(1), the State Administrative Tribunal is to be constituted by a judicial member or a senior member who is a qualified person.

[Section 226 inserted: No. 55 of 2004 s. 555.]

227. Assessor not member of SAT may sit on SAT

(1) The President may specify a person appointed as an assessor by the claimant or the acquiring authority to be one of the persons by whom the State Administrative Tribunal is to be constituted

even though the person does not hold office as a member of the State Administrative Tribunal.

(2) For the purposes of dealing with the matter for which the person was appointed as an assessor, the person is to be regarded as being an ordinary member and the *State Administrative Tribunal Act 2004* applies to the person as if, when acting in that capacity, the person were an ordinary member.

[Section 227 inserted: No. 55 of 2004 s. 555.]

*[**228.** Deleted: No. 55 of 2004 s. 556.]*

229. SAT may hear other claims by consent

The State Administrative Tribunal constituted to hear any claim under this Part may, by consent in writing of the claimant and acquiring authority in any other claim in respect of the same or of any other interest in land, hear and determine that other claim as though the State Administrative Tribunal had been constituted to hear and determine that other claim.

[Section 229 amended: No. 55 of 2004 s. 557.]

230. Assessor, objecting to etc.

(1) If either party objects to the appointment of an assessor, the President of the State Administrative Tribunal may, unless the objection appears to be frivolous or unreasonable, upon the application of the party objecting, require the party appointing the assessor to appoint another assessor instead.

(2) Unless the party required to appoint another assessor does so within 10 days after being required to do so, the President of the State Administrative Tribunal may, in specifying who is to constitute the Tribunal, choose any consenting person as if the person had been appointed as an assessor by the person to whom the requirement was given.

[Section 230 amended: No. 55 of 2004 s. 558.]

231. Assessor member dying or unable to act etc., replacing

If, for the purpose of dealing with a claim, the State Administrative Tribunal is constituted by persons any of whom was appointed as an assessor by one of the parties (an ***assessor member***) and, before the award is given, an assessor member dies or becomes incapable of acting, or resigns or refuses to act, the assessor member's place is to be taken by a person specified by the President of the State Administrative Tribunal on the appointment of the party who had appointed the assessor member or, if that party fails to make such an appointment within 10 days, by any other person whom the President of the State Administrative Tribunal may specify as if the person had been appointed by that party, and the matter is to proceed as if no change in constitution had taken place.

[Section 231 inserted: No. 55 of 2004 s. 559.]

*[**232-240.** Deleted: No. 55 of 2004 s. 560.]*

Division 5 — Assessing compensation

241. How compensation to be determined

(1) In determining the amount of compensation (if any) to be offered, paid, or awarded for an interest in land taken under Part 9, regard is to be had solely to the matters referred to in this section.

(2) Regard is to be had to the value of the land with any improvements, or the interest of the claimant in the land, assessed as on —

(a) in the case of an interest taken for a railway or other work authorised by a special Act — the first day of the session of Parliament in which the Act was introduced; or

(b) in the case of an interest taken by agreement under section 168 — the date of the execution of the agreement, unless the agreement provides otherwise; or

(c) in the case of an interest to which paragraphs (a) and (b) do not apply — the date of the taking,

and discounting any increase or decrease in value attributable to the proposed public work.

(3) If a notice of intention was registered in relation to the interest on a date before the date referred to in subsection (2), and a transaction relating to the land made between those dates affected the value of the interest, regard may be had to the value of the interest assessed as at the date referred to in subsection (2) and discounting the effect of the transaction.

(4) No regard is to be had to the value of any improvements made without the consent of the Minister after the registration of a notice of intention.

(5) Subject to subsection (4), in the case of a railway or other work authorised by a special Act, the value of any improvements made after the first day of the session of Parliament in which the Act was introduced but before the registration of the taking order are to be allowed, not exceeding their actual cost.

(6) Regard is to be had to the loss or damage, if any, sustained by the claimant by reason of —

(a) removal expenses; or

(b) disruption and reinstatement of a business; or

(c) the halting of building works in progress at the date when the interest is taken and the consequential termination of building contracts; or

(d) architect’s fees or quantity surveyor’s fees actually incurred by the claimant in respect of proposed buildings or improvements which cannot be commenced

or continued in consequence of the taking of the interest; or

(e) any other facts which the acquiring authority, the court, or the State Administrative Tribunal considers it just to take into account in the circumstances of the case.

(7) If the fee simple in land is taken from a person who is also the holder in fee simple of adjoining land, regard is to be had to the amount of any damage suffered by the claimant —

(a) due to the severing of the land taken from that adjoining land; or

(b) due to a reduction of the value of that adjoining land,

however, if the value of any land held in fee simple by the person is increased by the carrying out of, or the proposal to carry out, the public work for which the land was taken, the increase is to be set off against the amount of compensation that would otherwise be payable under paragraph (b).

(8) If the interest in land is taken without agreement, an amount considered by the court or the State Administrative Tribunal or, for the purposes of making an offer, by the acquiring authority, appropriate to compensate for the taking without agreement may be added to the award or offer.

(9) The additional amount under subsection (8) must not be more than 10% of the amount otherwise awarded or offered, unless the court or the State Administrative Tribunal, or, for the purposes of making an offer, the acquiring authority, is satisfied that exceptional circumstances justify a higher amount.

(10) If the interest in land taken produces any rent or profits, then at the option of the acquiring authority, either —

(a) the amount of the rent or profits received by the acquiring authority, less the reasonable cost of collection, for the period from the date of registration of the taking order to the date of the payment of

compensation or the date of the award, whichever is earlier, is to be added to the compensation payable; or

(b) interest is to be paid on the amount of compensation for the same period, at the rate of 6% per annum, or such higher rate as the acquiring authority, the court, or the State Administrative Tribunal considers adequate having regard to the circumstances of each case,

but if the interest in land ceases to produce any rent or profits after the taking, interest is to be paid in accordance with paragraph (b).

(11) If the interest in land taken does not produce any rents or profits, interest is to be paid at the rate prescribed under section 8(1)(a) of the *Civil Judgments Enforcement Act 2004* as at the date of entry for construction or carrying out of the work or the date of registration of the taking order, whichever is earlier, and the interest is payable from —

(a) the date of the service of the claim on the acquiring authority; or

(b) the date of entry for construction or carrying out of the work,

whichever is earlier, to the date —

(c) when the offer was served on the claimant, if the compensation awarded by the State Administrative Tribunal or the court of competent jurisdiction is not more than the amount offered by the acquiring authority; or

(d) of settlement of the claim, in any other case.

(12) Subject to subsections (10) and (11) —

(a) when any amount representing an advance payment of compensation is paid to a claimant, interest on the total amount of compensation is payable only to the date of

the first payment, and interest is payable thereafter only on the balance outstanding from time to time; and

(b) when any amount is offered by the acquiring authority as an advance payment of compensation under section 248 and the offer is not accepted by the claimant within 30 days of the day on which it was made, no interest is payable thereafter in respect of the amount so offered.

(13) If —

(a) the amount of any purchase money or compensation, or any payment on account, is payable under this Part or Part 9; and

(b) the acquiring authority causes a notice to be published once in a daily newspaper circulating throughout the State stating that the authority intends to make the payment; and

(c) 3 months after the publication of the notice, no person has been able, or being able has not agreed, to give a sufficient discharge and receipt in respect of that amount, or any portion of that amount,

the acquiring authority may cause the moneys to be paid into the Supreme Court and dealt with under section 249, and thereafter is not liable for any further interest payment on the moneys.

[Section 241 amended: No. 74 of 2003 s. 72(4); No. 55 of 2004 s. 561 and 569; No. 8 of 2009 s. 83(3).]

242. Rates and taxes, apportionment of

(1) If land affected by a taking order was not occupied by, on behalf of or through a claimant on the date of taking, all rates and taxes which, under the provisions of any Act, are a charge on the land and are payable or paid by the claimant are to be apportioned between the claimant and acquiring authority as at that date.

(2) If the land was occupied by, on behalf of or through the claimant on the date of taking, the rates and taxes referred to in subsection (1) are to be apportioned between the claimant and acquiring authority as at the date when possession was given up by the claimant to the acquiring authority or when by agreement with the acquiring authority the claimant ceased to be responsible for the payment of rates and taxes.

(3) On the apportionment of rates and taxes under subsection (1) —

(a) the aggregate amount, if any, due by the claimant as rates and taxes at the date as at which the rates and taxes are required to be apportioned, if not paid by the claimant, are to be deducted from the amount of the compensation;

(b) the aggregate amount, if any, paid by the claimant as rates and taxes in respect of any period subsequent to the date as at which the rates and taxes are required to be apportioned, are to be added to the amount of compensation.

243. Acts by claimant to make land less suitable for public work to be taken into account

If the State Administrative Tribunal or the court hearing an action for compensation under section 202 is of the opinion that the claimant has, at any time after the date of registration of the relevant notice of intention, or, if no notice of intention was issued, of the date of taking, done anything upon or under the land with the effect of making the land less suitable for the purpose of the public work for which it is taken, the State Administrative Tribunal or the court is to take that into account, by way of deduction from the amount of compensation, and if, in its opinion, the action so increases the cost of executing the public work that the increase in cost exceeds the value of the land taken, the award is to be for the payment by the claimant to the acquiring authority of the amount of the excess, and the costs of inquiry.

[Section 243 amended: No. 55 of 2004 s. 562 and 569.]

244. One sum or separate sums may be awarded and conditions attached

(1) The State Administrative Tribunal or the court hearing the action for compensation may award one aggregate amount as compensation for a whole claim, or may divide the claim into several items and award a separate amount for each item.

(2) The State Administrative Tribunal or the court may determine that no compensation is payable in respect of the whole claim or in respect of any item.

(3) The State Administrative Tribunal or the court may attach conditions to the payment of the whole of the compensation or to the payment of the amount awarded for any item.

[Section 244 amended: No. 55 of 2004 s. 563 and 569.]

*[**245-247.** Deleted: No. 55 of 2004 s. 564.]*

Division 6 — Payment of compensation

248. Payments pending settlement of claim

(1) If a person has claimed compensation under this Part from an acquiring authority, the authority may offer to the claimant —

(a) to pay an amount as an advance payment, pending settlement of the claim; or

(b) whether or not an advance payment is offered, to carry out any rectification work in respect to damage to land for which the person is entitled to claim compensation, pending settlement of the claim,

and if the person accepts, may pay the amount or carry out the work.

(2) If the acquiring authority has made an offer of compensation under section 217, and the claimant has not accepted an offer of

rectification work, the claimant may require the authority to pay an amount of not more than 90% of the offer as an advance payment, pending settlement of the claim.

(3) The payment of an amount or the performance of rectification work under this section does not prejudice the rights of the claimant under this Part.

249. When title doubtful, compensation or purchase-money to be paid into Supreme Court

(1) If any doubt or dispute arises as to the right or title of any person to receive any compensation awarded under this Part, or any purchase-money or compensation agreed to be paid by an acquiring authority under Part 9 or this Part —

(a) in the case of compensation awarded by the State Administrative Tribunal or a court hearing an action for compensation under section 202, the acquiring authority may, within the period of 30 days after the award is made, pay the sum awarded into the Supreme Court; and

(b) in the case of purchase-money, or compensation agreed to be paid, the acquiring authority may pay the moneys into the Supreme Court.

(2) The Supreme Court, on the application of any person interested, is to make such orders as to the distribution of the moneys as it thinks just and equitable, and the Principal Registrar of the Supreme Court is to deal with and pay the moneys in accordance with the order.

(3) In the hearing of an application under subsection (2), the Supreme Court may make any order in relation to any costs that have been incurred in relation to the claim, whether before the State Administrative Tribunal, the court hearing an action for compensation, or the Supreme Court, that seems just and equitable to the Court, and may vary or revoke any order as to costs previously made by the State Administrative Tribunal or a court hearing an action for compensation.

[Section 249 amended: No. 55 of 2004 s. 565, 568 and 569.]

250. Investment of compensation money by Principal Registrar

Until any compensation paid into the Supreme Court under this Part is distributed in accordance with an order of the Court, the Principal Registrar of the Supreme Court is to invest it in the manner in which any moneys in the Supreme Court may by law be invested, and is to pay the annual proceeds to the party for the time being entitled to the rents and profits of the lands in respect of which compensation was awarded.

251. Mortgage debts, application of compensation to

(1) If an interest in the land in respect of which compensation is payable or awarded is subject to a mortgage, the compensation, or so much of it as is required for the purpose, upon the application of the mortgagee, is to be paid towards the discharge of the mortgage debt, so far as the compensation will go.

(2) In this section —

mortgage debt includes the interest payable on the mortgage concerned up to 6 months after the date of the taking.

252. Land sold with payment by instalments, application of compensation for

If the purchase price of an interest in land in respect of which compensation is payable or awarded was at the date of taking being paid by instalments, the compensation or so much of it as is required for the purpose, upon the application of the vendor, is to be paid in discharge —

(a) of the balance of the purchase price owing; and

(b) of interest, if any, payable in respect of the purchase price up to the amount of interest accrued during the period of 12 months commencing on the day after the date of taking.

253. Land subject to rent-charge etc., application of compensation in case of

If an interest in land in respect of which compensation is payable or awarded is subject to any rent-charge or annuity, the State Administrative Tribunal or the court hearing an action for compensation under section 202 is to determine —

(a) if the interest is part only of the interest subject to the rent-charge or annuity — what proportion of the rent-charge or annuity is to be redeemed so that the remaining interest constitutes as good a security for the remaining rent-charge or annuity as the whole of the interest constituted for the whole of the charge or annuity; and

(b) what part of the compensation is to be paid to the party entitled in redemption of the rent-charge or annuity.

[Section 253 amended: No. 55 of 2004 s. 569.]

254. Reducing rent if part of rented land is taken

If an interest in land in respect of which compensation is payable or awarded is part of an interest in land in respect of which any rent is payable, the State Administrative Tribunal or the court hearing an action for compensation under section 202 is to determine what part of that rent ceases to be payable, so that the rent ceasing to be payable bears the same proportion to the whole rent as the value of the interest in respect of which compensation is awarded bears to the value of the whole interest.

[Section 254 amended: No. 55 of 2004 s. 569.]

255. Easement etc. in lieu of compensation or purchase-money, grant of by Minister

If the amount of compensation or purchase-money to be paid to any person is determined by agreement, the Minister may agree to grant to the person any easement, right of way, right of

occupation, or any other interest, or any right, privilege, or concession in relation to the land designated for the public work, or any part of it, in satisfaction or part satisfaction of the compensation claimed by the person.

256. Easement etc. in lieu of compensation, powers of court or SAT as to

If the amount of compensation to be paid to any claimant is determined by the State Administrative Tribunal or a court hearing an action for compensation —

(a) the acquiring authority may offer, and the State Administrative Tribunal or the court may award to the claimant, any easement, right of way, right of occupation, or any other interest, or any right, privilege, or concession in relation to the land designated for the public work, or any part of it, in satisfaction or part satisfaction of the compensation claimed by the person; and

(b) the State Administrative Tribunal or the court may, by its award, declare which (if any) of the easements, interests, rights, privileges, or concessions so offered are to be granted to the claimant in satisfaction, or part satisfaction, or mitigation of the claim to compensation.

[Section 256 amended: No. 55 of 2004 s. 566 and 569.]

257. Grant of Crown land in lieu of compensation, Minister's powers as to

(1) The Minister may, with the consent of the claimant, in satisfaction, or in part satisfaction, for any interest in land which is taken or purchased under Part 9, grant to the person or persons from whom the land has been taken or purchased, any interest in Crown land available to be granted or disposed of.

(2) The value of the interest, together with any money compensation, must not exceed the amount which it appears to

the Minister would probably have to be paid if compensation were made wholly in money in the usual way.

258. Source of compensation etc.

Moneys payable as compensation or as costs under this Part, or on the apportionment of rates and taxes under section 242 —

(a) if payable by the Minister — are to be paid out of moneys appropriated by Parliament for the works in respect of which the claim for compensation arises;

(b) if payable by an acquiring authority other than the Minister — are to be paid out of the funds of the acquiring authority available for such purposes,

but neither the Minister nor any member of an acquiring authority are personally liable for any compensation or costs which may become payable under this Part.

Part 11 — General

259. Protection from personal liability

(1) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

(2) An action in tort does not lie against a person for anything that the person has, in good faith, done in the exercise or performance or purported exercise or performance of a function under this Act.

(3) The protection given by this section applies even though the thing done in the exercise or performance or purported exercise or performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.

(4) This section does not relieve the Crown of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.

[Section 259 amended: No. 28 of 2006 s. 379; No. 8 of 2010 s. 14.]

260. Improvements on Crown land, valuing for s. 35 and 92

When it is necessary for the value of an improvement on Crown land to be known for the purposes of section 35 or 92, the Minister must be satisfied that that improvement was made bona fide for the purpose of improving the Crown land.

261. Interest in Crown land of insolvent person available for benefit of creditors

(1) If a person holding an interest in Crown land under conditions relating to improvements or other matters is —

(a) an individual who is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, that interest may, with the permission of the Minister, be sold by the trustee of that person; or

(b) a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth —

(i) the property of which is in the possession of, or under the control of, a receiver, or a receiver and manager; or

(ii) which is under administration; or

(iii) which has executed a deed of company arrangement that is not yet terminated; or

(iv) which is a party to a compromise or arrangement made with any other person or persons and currently being administered; or

(v) which is being wound up,

that interest may, with the permission of the Minister, be sold by the person entitled under the *Corporations Act 2001* of the Commonwealth to sell that interest,

to a purchaser who would be qualified under this Act to hold the Crown land under those conditions.

(2) The purchaser of an interest sold under subsection (1) is substituted for the individual or corporation referred to in that subsection and has the same rights and obligations in relation to the relevant Crown land as that individual or corporation had.

(3) In subsection (1)(a) —

trustee has the same meaning as it has in the *Bankruptcy Act 1966* of the Commonwealth and includes the person corresponding to the trustee under the law of an external Territory or of a country other than Australia.

[Section 261 amended: No. 10 of 2001 s. 220.]

262. Death or mental incapacity of holder of interest in Crown land occurring before conditions as to improvements fulfilled

(1) If the holder of an interest in Crown land dies or is declared to be an incapable person under the *Mental Health Act 1962* [3]

before the fulfilment of the prescribed conditions of improvements relating to that interest, that interest may, with the approval of the Minister and subject to this section, be held by the legal representative of that holder or the person having charge of ~~his or her~~the holder's estate.

(2) An interest in Crown land is not to be held under subsection (1) by the legal representative of a person or the person having charge of the estate of the first-mentioned person unless all unfulfilled conditions, except residence, are fulfilled in trust for, and for the benefit of, the persons entitled to that interest.

(3) A legal representative or person having charge of an estate referred to in subsection (1) must apply in writing to the Minister for permission to enter into occupation of the relevant Crown land within 12 months after the relevant death or declaration as an incapable person of the holder of the interest in that Crown land.

(4) If a legal representative or person having charge of an estate does not apply under subsection (3) within the relevant period of 12 months, the relevant Crown land may be forfeited under section 35 as if that failure to apply were the breach of a condition referred to in that section.

[Section 262 amended: No. 4 of 2023 s. 92.]

263. Death of holder of interest in Crown land with right to acquire fee simple

(1) If an interest in Crown land has been granted under the repealed Act or is granted under this Act, subject in either case to the right of the holder of that interest to acquire the fee simple of that Crown land, and that holder dies, the Minister may, on the application of the executor or administrator of the estate of that holder, transfer the fee simple in that Crown land to that executor or administrator.

(2) The fee simple in Crown land transferred under subsection (1) to an executor or administrator forms part of the estate of the deceased holder and may be dealt with accordingly.

264. ~~Damage~~Limited liability of Crown or management body for damage, injury or loss suffered on, or emanating from, certain ~~Crown~~ land~~, limited liability of Crown etc. for~~

(1) This section is in addition to, and not in derogation of, section 66.

(2) Despite any other written law, the liability of the Crown in respect of damage, injury or loss suffered by a person on, or from a cause emanating from —

(a) an unmanaged reserve ~~or~~, unallocated Crown land or land held by the Crown in fee simple is limited to damage, injury or loss caused by, or the cause of which is a direct consequence of, an act of the Crown or an activity undertaken by the Crown; or

(b) Crown land which —

(i) is transferred in fee simple, or an interest in which is granted, under this Act; or

(ii) has been disposed of by Crown grant or otherwise under the repealed Act,

does not include liability in respect of damage, injury or loss caused by a hazard or other factor of which warning is given in a statement contained in a memorial a memorandum of which is endorsed under section 17 on the certificate of title or certificate of Crown land title relating to that land.

(3) Despite any other written law, the liability of the Crown and a management body in respect of damage, injury or loss suffered by a person on, or from a cause emanating from, Crown land which is —

(a) within the relevant managed reserve; and

(b) unimproved,

is limited to damage, injury or loss caused by, or the cause of which is a direct consequence of, an act of the management body, or an activity undertaken by the management body, otherwise than in accordance with its management order.

(4) In this section —

Crown includes a State agency or State instrumentality or an officer or employee of the Crown or of a State agency or State instrumentality.

[Section 264 amended: No. 4 of 2023 s. 83.]

265. *Prescription Act 1832* (UK) not applicable to Crown land

(1) The *Prescription Act 1832* does not apply, and never has applied, to Crown land.

(2) In subsection (1), the reference to the *Prescription Act 1832* is a reference to the Imperial Act (2 & 3 Will. IV., c. 71) now known by that name [8].

266. Land no longer required for railway to become Crown land

When under an Act a railway has been discontinued or the line of a railway has been deviated and as a result of that discontinuance or deviation land dedicated for the railway is no longer required for that purpose, that land becomes by virtue of this section Crown land free of —

(a) any rights to minerals or petroleum; and

(b) any estates, rights, titles, interests, claims or demands,

of persons to or in respect of that land.

267. Offences on Crown land and proceedings for them

(1) In this section —

plant includes spore, seed or other product of the reproductive cycle of a plant;

structure includes —

(a) building; and

(b) post, pile, stake, pipe, chain, wire or other thing that is fixed to the soil or to anything fixed to the soil; and

(c) materials, objects and fixtures in the area of the structure.

(2) A person ~~who~~commits an offence if the person, without either the permission of the Minister or reasonable excuse —

(a) resides on Crown land; or

(b) constructs roads or tracks, or erects any structure, on Crown land; or

(c) clears, encloses, cultivates or causes or allows stock to graze on Crown land; or

(d) excavates Crown land or reclaims Crown land below high water mark; or

(e) collects, drills for or stores water on, or takes water from, Crown land; or

(f) removes from Crown land any plant (whether alive or dead) or such other thing of any kind as is prescribed; or

(g) deposits or leaves any thing of any kind on Crown land; or

(h) discharges any firearm or other weapon on Crown land~~,~~.

~~commits an offence and is liable to~~ Penalty for this subsection:

(a ~~penalty~~) a fine of $~~10~~20 000 ~~and, in the case of an offence of a continuing nature, to~~ ;

(b) a daily penalty of ~~$200~~a fine of $400 for each day or part of a day during which the offence continues.

(3) If a continuing state of affairs is created by an offence under subsection (2) and that state of affairs continues after —

(a) a person is convicted of that offence; and

(b) the court considers that that state of affairs could reasonably have been discontinued by the person,

the person commits an additional offence and is liable to an additional penalty of $~~200~~400 for each day on which the additional offence so continues.

(4) Subject to subsection (5), a prosecution for an offence under subsection (2) must be commenced within 10 years after the date on which the offence is alleged to have been committed.

(5) If an offence under subsection (2) is of a continuing nature, a prosecution for the offence may be commenced at any time during the continuance of that offence.

(6) In addition to any penalty imposed for an offence under subsection (2) or (3), a person convicted of that offence is liable to pay such amount by way of compensation or reimbursement for the reinstatement or rehabilitation of any Crown land and the cost of inspection, harvesting of crops or removal of stock or any other cost incurred in relation to that reinstatement or rehabilitation as the court convicting that person specifies.

(7) A person required under subsection (6) to pay an amount specified under that subsection must pay that amount to the clerk of the relevant court for transmission by that clerk to the Minister.

(8) An amount required under subsection (6) to be paid may be recovered by the Minister as a judgment debt by action in a court of competent jurisdiction.

(9) Nothing in this section affects any other provision of this Act or any provision of another written law so far as that provision would, but for this section, have effect in relation to a reserve, but a person is not liable to be punished more than once for an act or omission that constitutes an offence both under this section and any other such provision.

(10) In proceedings for an offence under subsection (2), the accused has the onus of proving in relation to the act or omission giving rise to that offence that —

(a) the Minister permitted that act or omission or that the accused had a reasonable excuse for that act or omission; or

(b) the land on which that offence is alleged to have been committed was not at the relevant time Crown land.

[Section 267 amended: No. 59 of 2004 s. 141; No. 84 of 2004 s. ~~82~~82; No. 4 of 2023 s. 84 and 91.]

268. Survey marks and surveyors etc., offences as to

(1) A person must not wilfully and without lawful excuse destroy, mutilate, deface, take away or alter a survey mark placed, sunk or set up for the purposes of this Act.

Penalty~~: $1 000~~ for this subsection:

(a) for a first offence ~~and~~, a fine of $2 000~~.~~;

(b) for ~~any~~a subsequent offence, a fine of $4 000.

(2) A person must not wilfully and without lawful excuse obstruct a person —

(a) placing, sinking or setting up a survey mark; or

(b) carrying out a survey,

for the purposes of this Act.

Penalty~~: $1~~ for this subsection: a fine of $2 000.

(3) In this section —

survey mark means cairn, beacon, structure, trigonometrical station, post, peg, block, plug, tube, pipe, spike, pole or other survey mark of whatsoever material composed.

[Section 268 amended: No. 4 of 2023 s. 91.]

269. ~~Contravening etc.~~ Contravention or avoidance of condition or covenant ~~as to~~in respect of Crown land~~, offence~~

(1) A person ~~who~~ must not —

~~(a) contravenes; or~~

(a) contravene a condition or covenant imposed in respect of Crown land under this Act; or

(b) directly or indirectly~~, enters~~ enter into a transaction relating to Crown land under this Act for the ~~purpose~~purposes of avoiding~~,~~

~~a condition or covenant imposed in respect of Crown land under this Act commits an offence and is liable to~~ a ~~penalty~~condition or covenant referred to in paragraph (a).

Penalty for this subsection:

(a) a fine of $~~1~~2 000~~ and~~ ;

(b) a daily penalty of ~~$100~~a fine of $200 for each day or part of a day during which the offence continues.

(2) In any proceedings for an offence under subsection (1)(b), a certificate of the Minister certifying that the purpose of the transaction in question is to avoid a condition or covenant —

(a) imposed in respect of Crown land under this Act; and

(b) set out in that certificate,

is prima facie evidence of that purpose.

(3) When a person is convicted of an offence under subsection (1)(b), that conviction constitutes a breach of a condition or covenant for the purposes of section 35 and that section applies to the Crown land in question accordingly.

[Section 269 amended: No. 4 of 2023 s. 85.]

270. Unauthorised structures on Crown land~~, Minister's powers as to etc.~~

(1) In this section and in sections 271 and 272 —

alleged unauthorised structure, in relation to a responsible entity, means a structure ~~which~~that the ~~Minister~~responsible entity considers to be an unauthorised structure;

notice means notice referred to in subsection (2);

responsible entity —

(a) for a managed reserve, means the Minister or the management body of the reserve; or

(b) for any other Crown land, means the Minister;

unauthorised structure means structure the erection of which —

(a) was not, at the time of its erection, authorised under any Act or other law; or

(b) has ceased, since the time of its erection, to be authorised by any Act or other law.

~~(2) The Minister~~(2) A responsible entity for Crown land may by notice published in a newspaper circulating in the locality of an alleged unauthorised structure that is on the Crown land direct the owner of, or any person occupying, that alleged unauthorised structure to remove it, its contents and any fixtures, materials and objects in its vicinity permanently from the Crown land before the day specified in that notice, being a day not less than 90 days after the day of publication of that notice in that newspaper.

(3) A notice may be directed to —

(a) the owners or occupiers of all alleged unauthorised structures that are on any Crown land specified in the notice; or

(b) the owner or occupier of each of one or more alleged unauthorised structures specified in the notice that are on any Crown land.

(4) The ~~Minister~~responsible entity must, within 14 days after the publication of a notice under subsection (2), cause a copy of the

notice to be served on the owner or occupier of each alleged unauthorised structure to which the notice relates.

(5) For the purposes of subsection (4), and without limiting section 274 of this Act or section 76 of the *Interpretation Act 1984*, a notice is duly served on the owner or occupier of an alleged unauthorised structure if a copy of the notice is —

(a) served on any person in occupation or apparently in occupation of the alleged unauthorised structure; or

(b) is affixed to the alleged unauthorised structure in a conspicuous place.

(6) If —

(a) a notice has been published under subsection (2) and a copy of the notice has been served under subsection (4); and

(b) no appeal is lodged under section 272(1) or, if an appeal is so lodged, the appeal is dismissed; and

(c) the whole or any part of an alleged unauthorised structure or an unauthorised structure, as the case requires, to which the notice relates, any contents of that structure or any fixtures, materials or objects remaining in the vicinity of that structure has or have not been removed from the Crown land by the day specified in the notice or, if an extension has been granted under section 271(3), by the day fixed by that extension,

that structure and those contents, fixtures, materials and objects become the property of the Crown and may be removed, destroyed or disposed of in such manner as the ~~Minister~~responsible entity thinks fit.

(7) No compensation is payable to any person in respect of the removal, destruction or disposal under subsection (6) of any alleged unauthorised structure or unauthorised structure, or any contents, fixtures, materials or objects.

[Section 270 amended: No. 4 of 2023 s. 86.]

271. Extensions of time for s. 270

(1) The owner or occupier of an alleged unauthorised structure to which a notice published under section 270(2) relates may apply ~~to the Minister under~~, in accordance with subsection (2~~)~~), to the responsible entity that published the notice for the extension of the period within which the alleged unauthorised structure, its contents and the fixtures, materials and objects in its area are to be removed.

(2) An application under subsection (1) is to be —

(a) made in writing and is to set out the grounds on which the extension is sought; and

(b) served on the ~~Minister~~responsible entity not later than 21 days before the day specified in the relevant notice.

(3) The ~~Minister~~responsible entity may extend the period referred to in subsection (1) by not more than 45 days after the day specified in the relevant notice and must grant that extension only if the ~~Minister~~responsible entity is satisfied that the applicant —

(a) is unable to remove the alleged unauthorised structure, contents, fixtures, materials and objects from the Crown land before the day specified in that notice; but

(b) intends, and is able, to remove the alleged unauthorised structure, contents, fixtures, materials and objects from the Crown land within the extended period if that extension is granted.

(4) If an appeal is lodged under section 272(1), an extension of the period referred to in subsection (1) is to be taken to have been granted under subsection (3) extending that period by 45 days —

(a) after the day on which the appeal is dismissed; or

(b) the appeal having been dismissed, after the day specified in the relevant notice,

whichever is the later.

[Section 271 amended: No. 4 of 2023 s. 87.]

272. Appeal against s. 270 notice

(1) Subject to subsection (2), a person on whom a copy of a notice has been served under section 270(4), or any person aggrieved by the notice, may within 21 days after that service or such longer period as the Minister in special circumstances allows lodge an appeal against the notice with the Minister under Part 3.

(2) An appeal can only be lodged under subsection (1) on the grounds that the structure to which the notice relates is not an unauthorised structure.

273. Delegation by Minister of s. 270 and 271 functions

(1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her delegate any of his or her powers and duties under section 270 or 271 to —

(a) an employee of a local government; or

(b) an employee within the meaning of the *Public Sector Management Act 1994*; or

(c) any management body or other person responsible for the care, control and management of a reserve.

(2) A power or duty delegated under subsection (1) must, if exercised or performed by the delegate, be exercised or performed in accordance with the instrument of delegation.

(3) Nothing in this section prevents or limits the application of sections 58 and 59 of the *Interpretation Act 1984* to a delegation made under subsection (1).

274. Service of documents for Act

(1) For the purposes of this Act, service of a document on a person may be effected —

(a) by delivering the document to the person personally; or

(b) by sending the document by letter (by pre-paid post) to the address of the person; or

(c) if a person has specified in a caveat or approved form that documents under this Act may be served on him or her by facsimile transmission to the number of his or her facsimile machine, by facsimile transmission to that number.

(2) For the purposes of subsection (1)(b) —

address in relation to a person means —

(a) address specified by the person in a caveat or in an approved form as the address to which documents addressed to the person are to be sent;

(b) if an address has not been specified under paragraph (a), address entered in the Register as the address of the person;

(c) if, in the case of an individual, an address has not been specified under paragraph (a) or entered in the Register, last known address of that person;

(d) if, in the case of a person who is not an individual, an address has not been specified under paragraph (a) or entered in the Register —

(i) registered office (if any) within the meaning of the *Corporations Act 2001* of the Commonwealth, the principal place of business or the principal office in the State of that person; or

(ii) address of the office of any administrator, manager, receiver, receiver and manager or liquidator appointed under the *Corporations*

Act 2001 of the Commonwealth in relation to that person if that address is the most recent address to be lodged with the Australian Securities and Investments Commission for that administrator, receiver, receiver and manager or liquidator.

(3) Unless the contrary is proved, in relation to service by or on behalf of the Minister —

(a) service by letter is to be taken to be effected at the time when the letter would have been delivered in the ordinary course of post; and

(b) service by facsimile transmission is to be taken to be effected at the time when a facsimile machine at the office of the Department prints a statement showing that —

(i) that transmission has been made to another facsimile machine; and

(ii) the other facsimile machine has received that transmission.

(4) For the purposes of subsection (3)(a), a letter is to be taken to be delivered in the ordinary course of post —

(a) to an address in the metropolitan region on the next business day after the letter is posted; or

(b) to an address outside the metropolitan region, but in the State, on the second business day after the letter is posted; or

(c) to an address outside the State, but in Australia, on the third business day after the letter is posted; or

(d) to an address outside Australia on the 14th business day after the letter is posted.

(5) If the Minister attempts to serve a document by sending it in a letter which is returned by the post office because the letter cannot, for any reason, be delivered to the person to whom it is

addressed, the Minister may if, in the circumstances and having regard to the provisions of this Act, the Minister thinks fit —

(a) direct any further document to be served; or

(b) direct substituted service of the document; or

(c) proceed without the document being served.

(6) In this section —

metropolitan region has the same meaning as it has in the *Planning and Development Act 2005*.

[Section 274 amended: No. 26 of 1999 s. 90; No. 10 of 2001 s. 220; No. 38 of 2005 s. 13.]

275A. Information about Crown land interest holders, disclosing

(1) In this section —

contact details includes postal address, telephone number, facsimile number and email address;

Crown land interest holder means the holder of —

(a) a pastoral lease or other lease; or

(b) a licence; or

(c) an interest in relation to Crown land;

public authority means —

(a) a department of the Public Service; or

(b) a State instrumentality; or

(c) a local government; or

(d) a body that provides to members of the public water, drainage, gas, electricity or ambulance or other emergency services; or

(e) a prescribed agency of the Commonwealth.

(2) The chief executive officer of the Department may disclose the name and contact details of a Crown land interest holder to —

(a) an officer or employee of a public authority for use in the performance of the public authority's functions; or

(b) the Director General of Mines, as defined in the *Mining Act 1978* section 8(1), for providing the information to applicants for, or holders of, mining tenements, as defined in that section, or to any other person who is required, under that Act, to give notice to a Crown land interest holder; or

(c) a prescribed person, in the circumstances and on such conditions as may be prescribed.

(3) For the purposes of this section, the Pastoral Lands Board may disclose the name and contact details of a pastoral lessee to the chief executive officer of the Department from the most recent return submitted by the pastoral lessee under section 113.

(4) Information may be disclosed under subsection (2) or (3), or provided under subsection (2)(b), despite any written law relating to confidentiality or secrecy.

(5) If information is disclosed, in good faith, under subsection (2) or (3), or provided under subsection (2)(b) (the ***disclosure***) —

(a) no civil or criminal liability, or liability to be punished for a contempt of court, is incurred in respect of the disclosure; and

(b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and

(c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

[Section 275A inserted: No. 8 of 2010 s. 15.]

275. Regulations generally

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are

necessary or convenient to be prescribed for giving effect to the purposes of this Act, and, in particular —

(a) providing for fees generally; and

(b) creating offences and providing a penalty not exceeding $~~1~~2 000 for any offence so created; and

(c) providing for the delegation under section 9(1) of powers conferred or duties imposed by this Act to convey or transfer the fee simple in Crown land; and

(d) determining how improvements are to be valued for the purposes of section 35(5)(a)(ii); and

(e) setting out any procedures to be followed by a local government before making a request under section 52(1); and

(f) providing for the manner in which surveys of land for the purposes of this Act are to be carried out; and

(g) setting out procedures to be followed by the Minister for the purposes of sections 74, 79 and 86(c); and

(ga) setting out standard pastoral lease conditions; and

(h) amending or supplementing, with effect from a time which is not earlier than the appointed day, the provisions set out in Schedule 2 for the purpose of providing an effective and efficient transition from the operation of the repealed Act to the operation of this Act; and

(i) amending or supplementing, with effect from a time which is not earlier than the appointed day, the provisions set out in Schedule 3 for the purpose of providing an effective and efficient transition of the matters referred to in those provisions to the operation of this Act.

(2) Subsection (1)(h) expires 5 years after it commences.

(3) Subsection (1)(i) expires 5 years after section 44 of the *Land Administration Amendment Act 2000* commences.

[Section 275 amended: No. 59 of 2000 s. ~~44~~44; No. 4 of 2023 s. 89.]

276. Regulations about fees

Regulations may be made under section 275 prescribing fees payable when application is made for —

(a) the conveyance or transfer in fee simple of, or a lease, licence or profit à prendre, or the creation of a reserve, over, Crown land not at the time of that application released for conveyance or transfer in fee simple, lease, licence, profit à prendre or creation of a reserve; or

(b) easements over Crown land; or

(c) land to be dedicated as a road; or

(d) the amalgamation of any land; or

(e) the reinstatement of any Crown land title; or

(f) such other procedure as is prescribed; or

(g) any other purpose under this Act,

and, in particular, prescribing fees payable in respect of the preparation of maps, plans or other documents of any kind for the purpose of any such application.

277. Regulations about s. 73 advisory panel

Regulations may be made under section 275 —

(a) providing for the constitution of the advisory panel referred to in section 73 and requiring consultation by the Minister with persons in relation to the appointment of the members of that panel; and

(b) providing for the appointment or election of the chairperson of that panel; and

(c) prescribing matters relating to the practice and procedure of that panel; and

(d) making provision for the appointment or other provision of staff for that panel; and

(e) making provision concerning remuneration payable to members and staff of that panel.

278. Forms, approval of etc.

(1) Subject to subsection (2), the chief executive officer of the Department may in writing —

(a) approve forms for the purposes of this Act and of Part IIIB of the TLA; or

(b) withdraw such an approval.

(2) The chief executive officer of the Department must, before acting under subsection (1) in respect of forms for the purposes of Part IIIB of the TLA, consult the Registrar.

279. Review of Act

(1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from the appointed day but in any event within 5 years and 6 months after the appointed day.

(2) The Minister is to prepare a report based on the review and is to cause the report to be laid before each House of Parliament within 6 years and 6 months after the appointed day.

Part 12 — Repeals, transitional, savings and validation related to *Land Act 1933*

280. *Interpretation Act 1984* not affected

Nothing in this Part or in Schedule 2 is to be construed so as to limit the application to it of the *Interpretation Act 1984*.

281. *Land Act 1933* repealed; transitional etc. provisions for (Sch. 2)

(1) The *Land Act 1933* is repealed.

(2) The transitional, savings and validation provisions set out in Schedule 2 have effect in relation to the *Land Act 1933*.

(3) A reference in a written law or a book, document or writing to the *Land Act 1933* is, unless the contrary intention appears or it is otherwise provided under this Act, to be construed as if that reference were a reference to this Act.

282. General saving for matters in existence etc. under amended Acts at 30 Mar 1998

Subject to this Act, all acts, matters and things which immediately before the commencement of the relevant provision of the *Acts Amendment (Land Administration) Act 1997*[9] were in existence or in operation under an Act amended by that provision subsist and enure, insofar as is consistent with that Act as so amended, as if at the time when they were originated or done that Act as so amended had been in operation and they had originated or been done under that Act as so amended.

Part 13 — Transitional related to pre-*Land Act 1933* Crown grants, Crown reserves, and Crown leases

[Heading inserted: No. 59 of 2000 s. 45.]

283. Term used: pre-1933 legislation

In this Part —

pre-1933 legislation means the *Land Act 1898*[4] or an Act or regulation repealed by section 2 of the *Land Act 1898*[4] or section 4 of the *Land Act 1933*.

[Section 283 inserted: No. 59 of 2000 s. 45.]

284. Pre-1933 legislation, transitional provisions for (Sch. 3)

The transitional provisions set out in Schedule 3 have effect in relation to pre-1933 legislation.

[Section 284 inserted: No. 59 of 2000 s. 45.]

Part 14 — Transitional provisions for the *Land and Public Works Legislation Amendment Act 2023*

[Heading inserted: No. 4 of 2023 s. 90.]

285. Returns by pastoral lessees

(1) In this section —

commencement day means the day on which the *Land and Public Works Legislation Amendment Act 2023* section 56 comes into operation;

commencement year means the year in which the *Land and Public Works Legislation Amendment Act 2023* section 56 comes into operation;

existing pastoral lease means a pastoral lease in existence immediately before commencement day;

former section 113 means section 113 as in force immediately before commencement day;

new section 113 means section 113 as amended by the *Land and Public Works Legislation Amendment Act 2023* section 56.

(2) The first return required to be submitted under new section 113 by the lessee under an existing pastoral lease is the return to be submitted on or before the due date, as defined in subsection (1) of that section, in the second year after the commencement year.

(3) Despite the *Land and Public Works Legislation Amendment Act 2023* section 56, former section 113 continues to apply so as to require a return to be submitted by the lessee under an existing pastoral lease in relation to, and to the period of 12 months before, 30 June in the commencement year.

[Section 285 inserted: No. 4 of 2023 s. 90.]

286. Annual rent for pastoral leases

(1) In this section —

commencement day means the day on which the *Land and Public Works Legislation Amendment Act 2023* section 60 comes into operation;

(2) The annual rent for a pastoral lease that applies immediately before commencement day continues to apply to the lease until a new determination under section 122H(1) or 123A(4)(b) comes into effect in respect of the lease.

(3) Subsection (2) is subject to sections 112A(2), 127, 134(8), 141(3) and 254.

(4) A rent determined under section 124(3) that applies to a pastoral lease immediately before commencement day —

(a) is taken to be the permit rent (as defined in section 124(1)) for the lease; and

(b) continues to apply to the lease until a new determination under section 122I(2) or 124(3) comes into effect in respect of the lease.

[Section 286 inserted: No. 4 of 2023 s. 90.]

Schedule 1 — Divisions of State

[Section 6]

Kimberley Division

All that portion of the State lying to the north of the parallel of 19° 30′ south latitude.

North-west Division

Bounded by lines starting from the seashore at a point situated west from the cairn on Bompas Hill, and extending east to the Murchison River; thence south-easterly along that river to a point situated north from the trigonometrical station near Tallering Peak; thence south to that trigonometrical station; thence south-easterly through the cairn on Mugga Mugga Hill to the summit of Mount Gibson; thence easterly to trigonometrical station K83; thence east to the No. 1 line of the rabbit-proof fence; thence northerly along that fence to the 760-mile post; thence north to the parallel of 19° 30′ south latitude; thence west to the seashore, and thence westerly and southerly along the seashore, including the islands adjacent, to the starting point.

Eucla Division

Bounded by lines starting from the seashore near Wilson Bluff, at the east boundary of the State, and extending north to the parallel of 30° south latitude; thence west to the 125th meridian of east longitude; thence south to a point situated east from the summit of the granite rock near the 50-mile Soak on the Dundas-Lake Lefroy Road; thence west to the No. 1 line of the rabbit-proof fence; thence south-easterly along that fence to the seashore, and thence easterly along the seashore, including the islands adjacent, to the starting point.

South-west Division

Bounded by lines starting from the seashore at a point situated west from the cairn on Bompas Hill and extending east to the Murchison River; thence south-easterly along that river to a point situated north from the trigonometrical station near Tallering Peak; thence south to that trigonometrical station; thence south-easterly through the cairn on Mugga Mugga Hill to the summit of Mount Gibson; thence easterly to trigonometrical station K83; thence east to the No. 1 line of the rabbit-proof fence; thence southerly along that fence to the seashore, and thence westerly and northerly along the seashore, including the islands adjacent, to the starting point.

Eastern Division

All that portion of the State not included in the Kimberley, North-west, South-west and Eucla Divisions already described.

Schedule 2 — Transitional, savings and validation provisions related to *Land Act 1933*

[Section 281(2)]

1. Sch. 2 supplementary to *Interpretation Act 1984*; terms used

(1) This Schedule is in addition to, and not in derogation from, the application to and in relation to this Act and the repealed Act of the *Interpretation Act 1984*.

(2) In this Schedule, unless the contrary intention appears —

interest includes right over Crown land continued in operation by this Schedule;

status order includes order made under section 33 of the repealed Act.

2. Property etc. of Minister under repealed Act s. 6(3)

All property and rights of property vested by section 6(3) of the repealed Act in the Minister immediately before the appointed day are by virtue of this clause vested in the Minister.

3. Incomplete disposal of Crown land under repealed Act s. 7

Any decision made by the Governor under section 7 of the repealed Act but not given effect before the appointed day is to be given effect as if that decision had been made by the Minister under this Act.

4. Incomplete acquisition of land under repealed Act s. 8

Any decision made by the Governor under section 8 of the repealed Act but not given effect before the appointed day is to be given effect as if that decision had been made by the Minister under section 11 of this Act.

5. Incomplete grant etc. to Aboriginal people under repealed Act s. 9

Any decision made by the Governor under section 9 of the repealed Act but not given effect before the appointed day is to be given effect as if that decision had been made by the Minister under section 83 of this Act.

6. Incomplete action as to district or townsite under repealed Act s. 10

(1) Any decision made by the Governor under section 10 of the repealed Act but not given effect before the appointed day is to be given effect as if that decision had been made by the Minister under section 26 of this Act.

(2) A district or townsite constituted under section 10 of the repealed Act and remaining so constituted immediately before the appointed day is to be treated as being constituted as a land district or townsite, as the case requires, under section 26 of this Act.

7. Incomplete resumption of land under repealed Act

(1) Any decision made by the Governor under a provision of the repealed Act enabling the resumption of land but not given effect before the appointed day is to be given effect as if that decision had been made under Part 9 of this Act.

(2) If a Crown grant issued under the repealed Act confers on the Crown a right to resume the land the subject of the Crown grant without the payment of compensation, that right is extinguished by virtue of this subclause.

(3) If a lease issued under Division (1) of Part V of the repealed Act confers on the Crown a right to resume the land the subject of that lease without the payment of compensation, that right is extinguished by this subclause and the Minister may acquire that land on —

(a) payment to the lessee of compensation for any improvements on that land; and

(b) repayment to the lessee of the amount paid for the purpose of acquiring the fee simple in that land.

8. Incomplete issue of Crown grant under repealed Act s. 12

A Crown grant in respect of which —

(a) the procedure specified in section 12 of the repealed Act had been begun but not completed; or

(b) the procedure so specified had been completed, but in respect of which a certificate of title had not been issued under the TLA,

before the appointed day is to be treated as if the fee simple of the land concerned had been disposed of under this Act.

9. Application etc. awaiting approval under repealed Act s. 13

An approval of an application, lease, licence, transfer, instrument or notice required by section 13 of the repealed Act to be signed, or signed and sealed, under that section which had not been so signed, or signed and sealed, before the appointed day is to be dealt with under the appropriate provision of this Act.

10. Reservation etc. under repealed Act s. 15 etc.

(1) A reservation, or a right to enjoy wells and springs and to bore and sink wells, which existed under section 15 of the repealed Act immediately before the appointed day continues to exist after the appointed day.

(2) Any reservation to the Crown of a right to take marketable timber in a Crown grant, conditional purchase lease or conditional purchase licence which was, despite sections 15A and 15B of the repealed Act, in existence immediately before the appointed day continues to exist after the appointed day.

11. Granted application under repealed Act s. 16(1) etc.

(1) Any application referred to in section 16(1) of the repealed Act which was granted, and any condition or reservation which was inserted in connection with that application, before the appointed day remain in existence for the purpose of being considered by the Minister when exercising any power conferred on the Minister by this Act.

(2) The Minister must, on the survey of any land applied for under the repealed Act before survey, make the relevant access, roads and reserves referred to in section 16(2) of the repealed Act despite the repeal of that section if that application was still in existence immediately before the appointed day.

12. Lease etc. liable to forfeiture under repealed Act s. 23 at 30 Mar 1998

(1) A lease or other holding and the lands therein, and all improvements thereon, and any rent or purchase money paid, that were immediately

before the appointed day liable to be forfeited under section 23 of the repealed Act are liable to be forfeited under section 35 of this Act as if any failure or neglect, or non-payment of rent or instalment of purchase money, referred to in section 23 of the repealed Act were a breach of a condition within the meaning of section 35 of this Act.

(2) Despite the repeal of the repealed Act by this Act, sections 23(2) and (3) and 24 of the repealed Act are to be taken to remain in operation in respect of anything liable to be forfeited by virtue of subclause (1).

13. Appeal to Governor pending under repealed Act s. 27

An appeal which was pending under section 27 of the repealed Act immediately before the appointed day may be disposed of by the Governor as if the repealed Act had not been repealed.

14. Reserves under repealed Act etc.

(1) Any decision to reserve land made by the Governor under section 29(1) of the repealed Act but not given effect before the appointed day is to be given effect as if that decision were a decision made by the Minister under section 41 of this Act to reserve that land for the same purpose as that envisaged by the Governor.

(2) Any land reserved under section 29 of the repealed Act and remaining so reserved immediately before the appointed day is to be taken to be land reserved under section 41 of this Act.

(3) Any decision to classify land in a reserve as of Class A made by the Governor under section 31 of the repealed Act but not given effect before the appointed day is to be given effect as if that decision were a decision made by the Minister under section 42 of this Act to classify that land as a class A reserve.

(4) A reserve classified as of Class A under section 31 of the repealed Act and remaining so classified immediately before the appointed day is to be taken to be a class A reserve.

(5) A reserve classified as of Class B under section 31 of the repealed Act and remaining so classified immediately before the appointed day remains so classified as if the repealed Act had not been repealed until that reserve ceases to be so classified, or is cancelled, in accordance with the repealed Act.

(6) For the purposes of subclause (5), section 31(2) of the repealed Act is to be construed as if that section —

(a) enabled the Minister to cancel a reserve referred to in that subclause by order made under this Act; and

(b) required the Minister to present a special report under the proviso to that section following that cancellation.

(7) A reserve classified as of Class C under section 31 of the repealed Act and remaining so classified immediately before the appointed day is to be treated as a reserve, but not an A class reserve, within the meaning of this Act.

15. Lease of reserve under repealed Act s. 32

(1) Any decision made by the Minister under section 32 of the repealed Act to grant a lease or licence but not given effect before the appointed day is to be given effect as if that decision had been made under section 47 or 48, as the case requires, of this Act.

(2) Any land the subject of a lease or licence —

(a) granted under section 32 of the repealed Act; and

(b) subsisting immediately before the appointed day,

is to be taken to be a lease or licence granted under section 47 or 48, as the case requires, of this Act.

16. Vesting order under repealed Act s. 33 etc.

(1) An order made under section 33 of the repealed Act and subsisting immediately before the appointed day continues, subject to this Act, to subsist after the appointed day as if that order were a management order or an order made under section 46(3) or 59(5), as the case requires, of this Act.

(1a) If, before the appointed day, a vesting order that subsists under subclause (1) as if it were an order made under section 46(3) did not require the Governor's or Minister's consent to dealings in interests in land the subject of the order, the Minister's approval to dealings in the land under section 18 is not required.

(1b) Any dealing before the coming into operation of section 46 of the *Land Administration Amendment Act 2000* in an interest in land the subject of an order referred to in subsection (1a) is taken to be, and always to have been, as valid and effective as it would have been if done with the Minister's approval.

(2) Subject to subclause (2a), any lease granted in compliance with a direction referred to in section 33(2) of the repealed Act and subsisting immediately before the appointed day continues, subject to this Act, to subsist after the appointed day as if that lease were a lease granted under a power conferred under section 46(3) of this Act.

(2a) Any lease granted in compliance with a direction referred to in section 33(2) of the repealed Act and subsisting immediately before the appointed day which is in respect of land comprising the whole or a part of the land in a reserve that has been cancelled continues to subsist subject to this Act, and is taken to have so continued to subsist on and from the appointed day, as if that lease were a lease continued under section 22 of this Act.

(2b) Any lease granted in compliance with a direction referred to in section 33(3)(a) of the repealed Act and subsisting immediately before the appointed day continues to subsist subject to this Act, and is taken to have so continued to subsist on and from the appointed day, as if that lease were a lease granted under section 47 of this Act.

(2c) If —

(a) a lease granted in compliance with a direction referred to in section 33(3)(a) of the repealed Act; or

(b) a sublease made in compliance with a consent referred to in section 33(3a) of the repealed Act,

subsisting immediately before the appointed day is subject to a condition or limitation that required the Governor's consent or approval that condition or limitation is to be taken instead to be a condition or limitation under which the consent or approval of the Minister is required.

(2d) Any consent or approval referred to in subclause (2c) given before the coming into operation of section 46 of the *Land Administration Amendment Act 2000* by the Minister is taken to be, and always to

have been, as valid and effective as it would have been if given by the Governor.

(3) A sublease granted under section 33(3a) of the repealed Act and subsisting immediately before the appointed day continues, subject to this Act and to the relevant lease referred to in section 47 of this Act, to subsist after the appointed day as if that sublease were a sublease granted under this Act.

(4) An order made under section 34 of the repealed Act as in force before the commencement of section 9 of the *Acts Amendment (Reserves) Act 1982* and subsisting immediately before the appointed day continues, subject to the repealed Act, to subsist after that commencement as if the repealed Act had not been repealed.

(5) Any by-laws continued in force under section 34 of the repealed Act and subsisting immediately before the appointed day continue, subject to the repealed Act, to subsist after the appointed day as if the repealed Act had not been repealed.

[Clause 16 amended: No. 59 of 2000 s. 46(1)-(5).]

17. Grants of land in fee simple subject to conditions

(1) A fee simple granted in compliance with a direction made by the Governor under section 33(4) of the repealed Act and subsisting immediately before the appointed day is to be taken to be land transferred in fee simple subject to conditions and referred to in section 75(1) of this Act subject to —

(a) the same conditions and with the same purpose as the fee simple so granted; and

(b) any mortgage effected with the consent of the Governor before the appointed day.

(2) If the land subject to a fee simple granted within the meaning of subclause (1) was before the appointed day mortgaged with the consent of the Governor and, after that land has become land transferred in fee simple subject to conditions under that subclause, the mortgagee completes the exercise of the power of sale or foreclosure under that mortgage, that land is by virtue of this subclause freed from the conditions and the purpose referred to in that subclause.

(3) On and from the appointed day any condition referred to in subclause (1)(a) under which the Governor's consent is required is taken instead to be a condition under which the consent of the Minister is required.

(4) Any consent referred to in subclause (3) given before the coming into operation of section 46 of the *Land Administration Amendment Act 2000* by the Minister is taken to be, and always to have been as, valid and effective as it would have been if given by the Governor.

(5) If land in fee simple granted within the meaning of subclause (1) has a classification of Class A under section 31 of the repealed Act the land is, and is taken since the appointed day to have been, land that may be dealt with in the same manner as if it were a Class A reserve under Part 4 of this Act.

(6) If land in fee simple granted within the meaning of subclause (1) has a classification under section 31 of the repealed Act as a reserve other than as a Class A reserve, that reservation is taken to have been cancelled on and from the appointed day.

[Clause 17 amended: No. 59 of 2000 s. 46(6).]

18. Management plan approved under repealed Act s. 34A

A management plan approved under section 34A of the repealed Act and subsisting immediately before the appointed day continues, subject to this Act, to subsist and to apply to the land concerned after the appointed day as if that management plan were a plan approved under section 49 of this Act.

19. Town and suburban lands being sold by auction

Land referred to in section 38 of the repealed Act which has been surveyed into lots and notified under that section but has not before the appointed day been disposed of under that section is to be sold or leased by public auction under section 74(1)(f) or 79(1)(a) of this Act.

20. Fencing condition under repealed Act s. 42

Any condition relating to fencing referred to in section 42 of the repealed Act which was in force immediately before the appointed day remains in force for the period for which it would, but for the

repeal of the repealed Act, have remained in force and any breach of such a condition is to be treated as being the breach of a condition within the meaning of section 35 of this Act and the Minister may act under that section accordingly.

21. Licence to occupy under repealed Act s. 43

(1) A licence issued under section 43 of the repealed Act and in force immediately before the appointed day remains in force, as if the repealed Act had not been repealed, for the remainder of the period for which it would, but for that repeal, have remained in force.

(2) Without limiting the generality of subclause (1), sections 18, 22, 41 and 42A of the repealed Act continue to apply in relation to licences remaining in force under that subclause.

(3) Particulars of a licence remaining in force under subclause (1) are to be endorsed or to remain on any qualified certificate of Crown land title created and registered in respect of the Crown land to which that licence relates.

22. Lessee entitled to acquire town or suburban land under repealed Act s. 44

(1) A lessee referred to in section 44 of the repealed Act who had not before the appointed day exercised his or her right to apply to purchase the fee simple of the leased land may apply to the Minister to purchase that fee simple and the Minister must, on —

(a) payment of the price fixed by the Minister and of all relevant prescribed fees; and

(b) completion of such improvements as were prescribed by regulations made under the repealed Act,

grant that application by transferring that land to that lessee in fee simple under this Act.

(2) On a transfer referred to in subclause (1), a certificate of title is to be issued for the land transferred in fee simple, subject to all the encumbrances to which the relevant lease was subject and in the same priorities.

23. Incomplete grant of land for *Housing Act 1980* under repealed Act s. 45

Any decision made by the Minister under section 45 of the repealed Act to grant town and suburban land to the State Housing Commission but not given effect before the appointed day is to be given effect as if the repealed Act had not been repealed.

24. Decisions under repealed Act s. 45A not effected

Any decision made by the Minister under section 45A of the repealed Act —

(a) to dispense with the requirements of Part IV of the repealed Act as to sale of town and suburban lands by public auction; or

(b) to approve of any lot being town or suburban lands being offered for sale in fee simple or for leasing for a term not exceeding 99 years on conditions,

but not given effect before the appointed day is to be treated as a decision to sell Crown land under section 74 of this Act and that section applies accordingly.

25. Decision under repealed Act s. 45B not effected

Any decision made by the Minister under section 45B of the repealed Act to invite applications for the purchase in fee simple of any suburban or town land but not given effect before the appointed day is to be given effect as if the repealed Act had not been repealed.

26. Conditional purchase lease of agricultural etc. land

(1) A conditional purchase lease granted under Division (1) of Part V of the repealed Act and subsisting immediately before the appointed day continues, subject to subclause (2), to subsist as if that lease had been granted under this Act.

(2) The Minister must transfer the fee simple in Crown land contained in a lease continued by subclause (1) to the holder of that lease when —

(a) the conditions of that lease have been fulfilled; and

(b) the purchase price and all relevant prescribed fees have been paid; and

(c) if that Crown land has not been surveyed, a survey plan of that Crown land has been lodged with the Registrar.

(3) On a transfer referred to in subclause (2), a certificate of title is to be issued for the fee simple transferred, subject to all the encumbrances to which the relevant lease was subject and in the same priorities.

27. Conditional purchase lease of special settlement land

(1) A conditional purchase lease granted under Division (1) of Part V of the repealed Act as read with Division (4) of that Part and subsisting immediately before the appointed day continues, subject to subclause (2), to subsist as if that lease had been granted under this Act.

(2) The Minister must transfer in fee simple Crown land contained in a lease continued by subclause (1) to the holder of that lease when —

(a) the conditions of that lease have been fulfilled; and

(b) the purchase price and all relevant prescribed fees have been paid; and

(c) if that Crown land has not been surveyed, a survey plan of that Crown land has been lodged with the Registrar.

(3) On a transfer referred to in subclause (2), a certificate of title is to be issued for the land transferred in fee simple, subject to all the encumbrances to which the relevant lease was subject and in the same priorities.

28. Conditions in cl. 22, 26 and 27 leases

To remove any doubt, it is declared that all existing conditions contained in a lease document in respect of a lease referred to in clause 22, 26 or 27 or a schedule to such a lease document continue to apply, and the lessee of that lease must comply with those conditions, while that lease continues under that clause.

29. Farm reconstruction areas, disposal of

The Minister may transfer any land referred to in section 89B of the repealed Act in fee simple to a bank as defined in section 5 of the *Banking Act 1959* of the Commonwealth.

30. War service land no longer required, disposal of

(1) The Minister may transfer any war service land in fee simple by private treaty, public auction or public tender and, if he or she does so, must apply the proceeds of that transfer in or towards recouping the State and Commonwealth expenditure incurred in relation to that war service land for the purposes of the *War Service Land Settlement Scheme Act 1954* and the repealed legislation.

(2) In subclause (1) —

repealed legislation means the *War Service Land Settlement Agreement Act 1951* and the Acts repealed by that Act;

war service land means land to which section 89C(2) of the repealed Act applied immediately before the appointed day.

31. Leases under repealed Act s. 116, 117 and 117A

(1) A lease granted under —

(a) section 116 of the repealed Act for any of the purposes set out in that section; or

(b) section 117 of the repealed Act in respect of any suburban, town or village lands; or

(c) section 117A of the repealed Act in respect of land vested in the Crown under section 286 of the *Local Government (Miscellaneous Provisions) Act 1960*,

and subsisting immediately before the appointed day continues, subject to subclause (2), to subsist as if that lease had been granted under this Act.

(2) The Minister may transfer in fee simple Crown land contained in a lease continued by subclause (1) to the holder of that lease when —

(a) any conditions of that lease prescribed or fixed, as the case requires, under the repealed Act have been fulfilled; and

(b) the purchase price and all relevant prescribed fees have been paid; and

(c) if that Crown land has not been surveyed, a plan of survey of that Crown land has been lodged with the Registrar.

(3) On a transfer referred to in subclause (2), a certificate of title is to be created and registered for the land transferred in fee simple subject to all the encumbrances to which the relevant lease was subject and in the same priorities.

32. Closed roads, incomplete alienation of

(1) If —

(a) a declaration has been made under section 118A, 118B or 118C; or

(b) an approval has been given under section 118CA,

of the repealed Act in respect of any land, but a certificate has not been issued under section 118F(2) of the repealed Act in respect of that land before the appointed day, the Minister may act under section 87 of this Act in respect of that land.

(2) If a certificate has been issued under section 118F(2) of the repealed Act in respect of any land but the remainder of the procedure to be followed under Part VIIA of the repealed Act in respect of that land has not been completed before the appointed day, that procedure may be completed as if the repealed Act had not been repealed.

33. Discharged soldiers, deferment of rent payable by

(1) If a lease has been acquired under Part VIII of the repealed Act by —

(a) a discharged soldier or dependant under the *Discharged Soldiers Settlement Act 1918* [10]; or

(b) a discharged member of the forces as defined by section 139B of the repealed Act,

and the lease remains in force immediately before the appointed day, the lease continues to have effect after the appointed day, and purchase money and interest continue to be payable, as if the repealed Act had not been repealed.

(2) Despite subclause (1) —

(a) the Minister may dispense with the prepayment of the first half-yearly instalment of purchase money, and may dispense with payment of interest during the first year of the term of the lease, but in that case that interest is to be capitalized and

added to, and treated for all purposes as part of, the purchase money; and

(b) the interest chargeable to the lessee is to be the rate payable for the money raised and applied to the acquisition of the land selected, except that the interest on the value of improvements —

(i) may, during the first 5 years of the term of the lease, be reduced; and

(ii) is payable in accordance with regulations made under section 275 of this Act.

34. Easements

(1) Subject to subclause (2), an easement granted under section 134B of the repealed Act and in force immediately before the appointed day is to be taken to be an easement granted under section 144 of this Act.

(2) If the Minister has cancelled an easement under section 134E(1) of the repealed Act before the appointed day but that cancellation has not been recorded under paragraph (c) or (d) of that section before the appointed day, the Minister must give to the Registrar notice of that cancellation forthwith after the appointed day and the Registrar must, without requiring the payment of any fee, record that cancellation in the Register.

(3) An easement created with the consent of the Minister —

(a) under section 134G of the repealed Act and in force immediately before the appointed day is to be taken to be an easement created with the permission of the Minister under section 148 of this Act; or

(b) under section 134H of the repealed Act and in force immediately before the appointed day is to be taken to be an easement referred to in section 149 of this Act, and the person having the benefit of that easement must lodge the original of the instrument creating that easement with the Registrar.

(4) If a person required by subclause (3)(b) to lodge the original of an instrument does not comply with that requirement, the easement created by that instrument ceases to have effect.

(5) A request made under section 134J(1) of the repealed Act but not given effect before the appointed day is to be given effect as if that request were a request made under section 150 of this Act.

(6) If a person has before the appointed day received a notice under section 134K of the repealed Act requiring him or her to deliver up a deed, certificate or other instrument, that section remains in force in relation to the notice as if the repealed Act had not been repealed until that requirement has been complied with or proceedings for an offence under that section have been concluded or abandoned.

(7) While an easement continues in force after the appointed day by virtue of this clause, sections 134L and 134M of the repealed Act are to be taken to remain in force in relation to the easement as if the repealed Act had not been repealed.

35. Priority of applications (repealed Act s. 135)

(1) If 2 or more applications for the same land had been lodged or received at the same time under section 135 of the repealed Act and it had not been determined under that section before the appointed day which of those applications was to be granted, that section is to be taken to remain in force in respect of those applications as if the repealed Act had not been repealed until that determination is made.

(2) A determination made by virtue of subclause (1) is to be treated as indicating for the purposes of this Act the successful applicant for an interest in the relevant Crown land or for the relevant fee simple.

36. Rents under leases continued by this Schedule

Section 139(1), (2), (2a), (2b), (3) and (4) of the repealed Act applies in relation to leases continued by this Schedule as if the repealed Act had not been repealed.

37. Lease of lessee who served in H. M. Forces

A lease referred to in section 139A of the repealed Act and subsisting immediately before the appointed day continues, subject to the repealed Act, to have effect after the appointed day, and purchase money and interest continue to be payable in respect of that lease and the power to defer the payment of rent conferred by that section continues, as if the repealed Act had not been repealed.

38. Leases continued by this Schedule not to be renewed

(1) Subject to subclause (2), a lease continued by this Schedule cannot be renewed.

(2) This clause does not apply to a lease of Crown land granted under or for the purposes of an Act which ratifies or approves an agreement to which the State is a party.

39. Person entitled to Crown grant under repealed Act s. 142(2)

(1) A person who was, immediately before the appointed day, entitled under section 142(2) of the repealed Act to receive a permit to occupy Crown land but had not yet obtained a Crown grant of that Crown land is entitled, despite anything in this Act, to have that Crown land transferred to him or her in fee simple under this clause without any further payment or compliance with any further conditions.

(2) The Minister must transfer the fee simple in Crown land to a person entitled under subclause (1) to that transfer.

40. Ministerial approvals under repealed Act s. 143

An approval given under section 143(1) or (2a) of the repealed Act in respect of a transfer, mortgage, sublease, sale, assignment or other disposal which has not been completed before the appointed day is to be taken to be the equivalent approval under section 18 of this Act for the purpose of completing that transfer, mortgage, sublease, sale, assignment or other disposal.

41. Incomplete transfer of lease or licence under repealed Act s. 144

The transfer of a lease or licence under section 144 of the repealed Act which had not been completed before the appointed day may be completed under that section as if the repealed Act had not been repealed.

42. Incomplete mortgage of lease or licence under repealed Act s. 145

(1) The mortgage of a lease or licence under section 145 of the repealed Act which had not been completed before the appointed day may be completed under that section as if the repealed Act had not been repealed.

(2) Nothing in this Act affects the rights of mortgagees under mortgages under section 145 of the repealed Act completed before the appointed day.

43. Incomplete procedures under repealed Act s. 149A and 149B

A procedure begun under section 149A or 149B of the repealed Act in respect of an estate, interest or caveat, but not completed, before the appointed day may be completed under that section as if the repealed Act had not been repealed.

44. Crown land records, validation of and conversion to qualified certificates of Crown land title for transitional period

(1) Crown land records —

(a) compiled by the Department before the repeal of the repealed Act; and

(b) recording interests in Crown land and status orders in respect of Crown land,

are, insofar as they were not authorised by the repealed Act and in particular by section 151 of the repealed Act and subject to this clause, to be treated as being and always having been valid.

(2) For the purposes of effecting a transition from Crown land records referred to in subclause (1) to certificates of Crown land title, each Crown land record in respect of a parcel of Crown land is to be treated as being a qualified certificate of Crown land title created and registered in respect of that parcel, and is subject to other interests in Crown land and dealings created or effected —

(a) under the repealed Act; or

(b) before the repeal of the repealed Act, under any other written law.

45. Procedure for registering interests, status orders and caveats granted etc. under repealed Act or any other written law

(1) In this clause —

responsible person means person —

(a) who is responsible for the administration of Crown land while it is reserved, set apart or vested for, or dedicated to, the purposes of another written law; or

(b) in whom land reserved under the repealed Act was vested, or to whom the fee simple in, or a lease of, land so reserved was granted, under section 33 of the repealed Act immediately before the appointed day.

(2) For the purposes of the endorsement on a certificate of Crown land title of an interest, status order or caveat continued by this Act, the Minister may require the responsible person of the relevant parcel of land, each person having an interest in that parcel and each caveator, if any, of that parcel to provide to the Minister —

(a) all available documentary evidence of the interest and of any other interest or a status order in respect of that parcel; and

(b) a plan of survey or sketch plan of that parcel in an approved form; and

(c) a statutory declaration stating that all interests, status orders or caveats in respect of that parcel have been fully disclosed and that all documents, plans and other information provided are accurate and complete; and

(d) such other information in an approved form as the Minister requires.

(3) In addition to making requirements under subclause (2), the Minister may for the purposes referred to in that subclause advertise by such means as the Minister thinks fit a request for members of the public to provide to the Minister information of the kind referred to in subclause (2)(a), (b), (c) and (d).

(4) A plan of survey or sketch plan prepared from information provided in response to a requirement under subclause (2) or an advertisement under subclause (3) or both —

(a) may show the geographical locations and boundaries of each interest, status order or caveat in respect of the relevant parcel which differ from those described in documentary evidence referred to in subclause (2)(a), or subclause (3) as read with subclause (2)(a), if that difference is caused by —

(i) the inaccuracy or inadequacy of any description, diagram, plan of survey or sketch plan of that parcel; or

(ii) any discrepancy between actual measurements or bearings at any time made, marked or taken on the ground and those set out in the instruments creating or evidencing that interest or status order, or in that caveat; or

(iii) any prescribed circumstance;

and

(b) must be prepared in accordance with good land use planning principles.

(5) A plan of survey or sketch plan referred to in subclause (3) must be approved by an authorised land officer.

(6) The Minister must ensure that —

(a) documentary evidence provided under subclause (2)(a), or subclause (3) as read with subclause (2)(a), is lodged; and

(b) plans of survey or sketch plans are lodged,

with the Registrar when the Minister makes an application under section 29.

(7) The Registrar must deal with the evidence and plans lodged under subclause (5) in accordance with section 81U of the TLA.

(8) Anything done in relation to a parcel of land before the appointed day which would have been valid had it been done after the appointed day is to be taken to have been valid and lawfully done.

46. Dealings or caveats as to Crown land to be registered or recorded within transitional period

(1) For the purposes of clauses 44 and 45, each person who has a dealing or caveatable interest in respect of Crown land created before the commencement of the transitional period may, within the transitional period, lodge that dealing or a caveat in respect of that interest with the Registrar for registration or recording, as the case requires.

(2) A dealing which is not registered, or an interest in respect of which a caveat is not recorded, before the expiry of the transitional period is void as against a prior registered dealing or recorded caveat in respect of the same parcel of Crown land to the extent of any inconsistency between the first-mentioned dealing or caveat and that prior registered dealing or recorded caveat.

(3) Nothing in this clause prevents the registration of a dealing or the recording of any caveat referred to in subclause (1) after the expiry of the transitional period.

47. Purported assignment of certain leases validated and registrable as transfers of leases

The purported assignment of a lease under the repealed Act or any other written law, or under the TLA before the appointed day (whether registered as an assignment under the repealed Act or not), may be registered under this Act as read with the TLA as a transfer of the lease and, if so registered, is to be regarded as having taken effect as a valid transfer of the lease on the date of that purported assignment.

48. Licences continued under cl. 9, 10(2) and 15 caveatable under TLA

A licence to which clause 9, 10(2) or 15 applies and which continues to subsist by virtue of this Schedule is an estate or interest capable of being claimed by caveat lodged under the TLA.

49. Caveat lodged under repealed Act s. 152

A caveat lodged under section 152 of the repealed Act but not recorded before the appointed day may be recorded under this Act

against a certificate of Crown land title or qualified certificate of Crown land title.

50. Incomplete execution against land under repealed Act s. 159

An execution against land begun under section 159 of the repealed Act as read with the TLA, but not completed, before the appointed day may be completed under that section as read with the TLA as if the repealed Act had not been repealed.

51. Incomplete transmission under repealed Act s. 160 if no administration of deceased estate

A procedure begun under section 160 of the repealed Act, but not completed, before the appointed day may be completed under that section as if the repealed Act had not been repealed.

52. Death or lunacy occurring before fencing and improvements completed

If land is being held under section 161 of the repealed Act by a legal representative, or the person having the charge of the estate, of a person immediately before the appointed day, section 262 of this Act applies to that land.

53. Unauthorised structures on public lands

If the procedure provided for in sections 164A and 164AA of the repealed Act has been begun, but not completed, before the appointed day, that procedure may be completed under the equivalent provisions of sections 270, 271 and 272 of this Act, and this Act applies accordingly with any necessary modifications.

54. Delegations in respect of unauthorised structures

(1) A delegation in force under section 164B of the repealed Act in respect of section 164A or 164AA of the repealed Act immediately before the appointed day continues in force as if it were a corresponding delegation under section 9(1)(c) of this Act in respect of section 270 or 271 of this Act until revoked under subclause (2).

(2) The Minister may revoke a delegation continued in force under subclause (1).

55. Auctioneers may sell without licences

If an auctioneer was, immediately before the appointed day, conducting a sale by auction under section 169 of the repealed Act, that section continues to apply to the auctioneer as if the repealed Act had not been repealed until that sale is concluded.

56. Previous restriction of public access validated

Any restriction of public access to an area —

(a) leased under a power conferred under section 33(2) of the repealed Act, which restriction was imposed by or on behalf of the lessee; or

(b) leased in accordance with a direction given under section 33(3) of the repealed Act, which restriction was imposed by or on behalf of the lessee; or

(c) subleased under section 33(3a) of the repealed Act, which restriction was imposed by or on behalf of the sublessee,

before the appointed day is, unless imposed contrary to the terms of the relevant lease or sublease, to be taken to have been valid and lawfully imposed.

Schedule 3 — Crown grants, Crown reserves, and Crown leases made or created before the *Land Act 1933*

[Heading inserted: No. 59 of 2000 s. 47.]

[s. 284]

1. Terms used

In this Schedule, unless the contrary intention appears —

land reserved means land reserved under the *Land Act 1898*[4] or an Act or regulation repealed by section 2 of the *Land Act 1898*[4] or by section 4 of the *Land Act 1933* and remaining so reserved immediately before the appointed day;

pre-1933 legislation has the same definition as it has in section 283.

[Clause 1 inserted: No. 59 of 2000 s. 47.]

2. Crown grants made before *Land Act 1933*

(1) A Crown grant conveying to the grantee a portion of Crown land in fee simple of any reserve granted under pre-1933 legislation and subsisting immediately before the appointed day is to be taken to be land transferred in fee simple subject to conditions referred to in section 75(1) of this Act but subject to —

(a) the same conditions and with the same purpose as the fee simple so granted except that any condition under which the consent of the Governor is required is taken instead to be a condition under which the consent of the Minister is required; and

(b) any mortgage effected with the consent of the Governor before the appointed day.

(2) If the land subject to a fee simple granted within the meaning of subclause (1) was before the appointed day mortgaged with the consent of the Governor and, after that land has become land transferred in fee simple subject to conditions under that subclause, the mortgagee completes the exercise of the power of sale or foreclosure under that mortgage, that land is by virtue of this subclause freed from the conditions and the purpose referred to in that subclause.

(3) If land in fee simple granted within the meaning of subclause (1) has a classification of Class A under section 2(1) of the *Permanent Reserves Act 1899*[11] the land is to be taken to be, and to have been on and from the appointed day, land that may be dealt with in the same manner as if it were a class A reserve under Part 4 of this Act.

(4) If land in fee simple granted within the meaning of subclause (1) has a classification under section 2(2) or (3) of the *Permanent Reserves Act 1899*[11] as a reserve other than as a Class A reserve that reservation is taken to have been cancelled on and from the appointed day.

[Clause 2 inserted: No. 59 of 2000 s. 47.]

3. Crown reserves created before *Land Act 1933*

(1) Any land reserved is to be taken to be land reserved under section 41 of this Act.

(2) Any land reserved that was classified as a Class A reserve and remained so classified immediately before the appointed day is to be taken to be, and to have been on and from the appointed day, a class A reserve.

(3) Any land reserved that was classified as a Class B reserve and remained so classified immediately before the appointed day is to be taken to be, and to have been on and from the appointed day, a Class B reserve under section 31 of the repealed Act and remains so classified as if the repealed Act had not been repealed until that reserve ceases to be so classified, or is cancelled, in accordance with the repealed Act.

(4) For the purposes of subclause (3), section 31(2) of the repealed Act is to be construed as if that section —

(a) enabled the Minister to cancel a reserve referred to in that subclause by order made under this Act; and

(b) required the Minister to present a special report under the proviso to that section following that cancellation.

(5) Any land reserved that was classified as a Class C reserve and remained so classified immediately before the appointed day is to be treated as a reserve, but not an A class reserve, within the meaning of this Act.

(6) A vesting order made under section 42 of the *Land Act 1898*[4] and subsisting immediately before the appointed day continues, subject to this Act, to subsist, and is taken to have continued to so subsist on and from the appointed day, as if that order were a management order or an order made under section 46(3) or 59(5), as the case requires, of this Act.

(7) If, before the appointed day, a vesting order that subsists under subclause (6) as if it were an order made under section 46(3) did not require the Governor's consent to dealings in interests in the land the subject of the order, the Minister's approval to dealings in the land under section 18 is not required.

(8) An order made under section 43 of the *Land Act 1898*[4] and subsisting immediately before the appointed day continues, subject to this Act, to subsist, and is taken to have continued to so subsist on and from the appointed day, as if that order were a management order.

(9) Where under an Order in Council made under section 43 of the *Land Act 1898*[4] a board of management has power to make, repeal and alter by-laws for the control and management of a reserve —

(a) any such by-laws in force before the appointed day continue in force until repealed under this subclause or until the management order is revoked under section 50, whichever first occurs; and

(b) the board of management having control of the reserve may make, repeal, or alter by-laws in relation to the reserve as if, and with effect as if, section 43 of the *Land Act 1898*[4] had not been repealed.

[Clause 3 inserted: No. 59 of 2000 s. 47.]

4. Leases granted under *Land Act 1898*

(1) Any lease for 999 years granted under section 42 of the *Land Act 1898*[4] and subsisting immediately before the appointed day is to be taken to be and to have been on and from the appointed day a lease granted under section 47 of this Act for the balance of its unexpired term, except that any condition in the lease under which the consent of the Governor is required is to be taken to be a condition under which the consent of the Minister is required.

(2) Any consent referred to in subclause (1) given before the coming into operation of section 47 of the *Land Administration Amendment Act 2000* by the Minister is taken to be, and always to have been, as valid and effective as it would have been if given with the Governor's consent.

[Clause 4 inserted: No. 59 of 2000 s. 47.]

5. Other leases granted under pre-1933 legislation

(1) A lease of land or a part of the land in a reserve granted under pre-1933 legislation subsisting immediately before the appointed day is to be taken to be and to have been on and from the appointed day a lease granted under section 47, except that any condition in the lease under which the consent of the Governor is required is to be taken to be a condition under which the consent of the Minister is required.

(2) Any consent referred to in subclause (1) given before the coming into operation of section 47 of the *Land Administration Amendment Act 2000* by the Minister is taken to be, and always to have been, as valid and effective as it would have been if given with the Governor's consent.

[Clause 5 inserted: No. 59 of 2000 s. 47.]

Notes

This is a compilation of the *Land Administration Act 1997* and includes amendments made by other written laws [18]. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Land Administration Act 1997	30 of 1997	3 Oct 1997	s. 1 and 2: 3 Oct 1997; Act other than s. 1 and 2: 30 Mar 1998 (see s. 2 and *Gazette* 27 Mar 1998 p. 1765)
Dampier to Bunbury Pipeline Act 1997 s. 52 (Sch. 4 Div. 6)	53 of 1997	12 Dec 1997	30 Mar 1998 (see Sch. 4 Div. 6 cl. 30 and *Gazette* 27 Mar 1998 p. 1765)
Acts Amendment (Land Administration, Mining and Petroleum) Act 1998 Pt. 2 (except s. 4 and 7) [7]	61 of 1998 (as amended by No. 60 of 1999 s. 7.3)	11 Jan 1999	11 Jan 1999 (see s. 2(1))
Acts Amendment and Repeal (Financial Sector Reform) Act 1999 s. 90	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and *Gazette* 30 Jun 1999 p. 2905)
Gas Corporation (Business Disposal) Act 1999 s. 104	58 of 1999	24 Dec 1999	16 Dec 2000 (see s. 2(5) and *Gazette* 15 Dec 2000 p. 7201)
Rail Freight System Act 2000 Pt. 5 Div. 4 [12]	13 of 2000	8 Jun 2000	30 Jun 2000 (see s. 2(1) and *Gazette* 30 Jun 2000 p. 3397)
Statutes (Repeals and Minor Amendments) Act 2000 s. 14(13) and 20	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
Acts Amendment (Australian Datum) Act 2000 s. 4	54 of 2000	28 Nov 2000	16 Dec 2000 (see s. 2 and *Gazette* 15 Dec 2000 p. 7201)

Short title	Number and year	Assent	Commencement
Land Administration Amendment Act 2000 [2, 5, 6, 13, 14]	59 of 2000	7 Dec 2000	s. 38(1): 30 Mar 1998 (see s. 2(4) and *Gazette* 27 Mar 1998 p. 1765); s. 52: 8 Dec 2000 (see s. 2(5)); Act other than s. 8, 10(2), 12, 14(1) and (2), 19(2) and (3), 22, 24-37, 38(1), 51 and 52: 7 Dec 2000 (see s. 2(1)); s. 8, 10(2), 12, 14(1) and (2), 19(2) and (3), 22, 24-37 and 51: 10 Apr 2001 (see s. 2(2) and *Gazette* 10 Apr 2001 p. 2073)
Reprint of the *Land Administration Act 1997* as at 22 Jun 2001 (includes amendments listed above)			
Corporations (Consequential Amendments) Act 2001 s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and *Gazette* 29 Jun 2001 p. 3257 and Cwlth *Gazette* 13 Jul 2001 No. S285)
Public Transport Authority Act 2003 s. 150 and 167	31 of 2003	26 May 2003	1 Jul 2003 (see s. 2(1) and *Gazette* 27 Jun 2003 p. 2384)
Acts Amendment (Carbon Rights and Tree Plantation Agreements) Act 2003 Pt. 2	56 of 2003	29 Oct 2003	24 Mar 2004 (see s. 2 and *Gazette* 23 Mar 2004 p. 975)
Contaminated Sites Act 2003 s. 100	60 of 2003	7 Nov 2003	1 Dec- 2006 (see s. 2 and *Gazette* 8 Aug- 2006 p. 2899)
Statutes (Repeals and Minor Amendments) Act 2003 s. 72	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Acts Amendment (Reserves and Reserve Boards) Act 2003 Pt. 2	76 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Courts Legislation Amendment and Repeal Act 2004 s. 141 [15]	59 of 2004 (as amended by No. 2 of 2008 s. 77(13))	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)

Short title	Number and year	Assent	Commencement
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 67 Subdiv. 1 [16, 17]	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction by *Gazette* 7 Jan 2005 p. 53))
Reprint 2: The *Land Administration Act 1997* as at 24 Jun 2005 (includes amendments listed above except those in the *Contaminated Sites Act 2003*)			
Financial Administration Legislation Amendment Act 2005 s. 42	5 of 2005	27 Jun 2005	1 Jan 2006 (see s. 2 and *Gazette* 23 Dec 2005 p. 6243)
Electricity Corporations Act 2005 s. 139	18 of 2005	13 Oct 2005	1 Apr 2006 (see s. 2(2) and *Gazette* 31 Mar 2006 p. 1153)
Water Legislation Amendment (Competition Policy) Act 2005 Pt. 4	25 of 2005	12 Dec 2005	3 Jun 2006 (see s. 2 and *Gazette* 2 Jun 2006 p. 1985)
Planning and Development (Consequential and Transitional Provisions) Act 2005 Pt. 2 Div. 2	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1078)
Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 13 Div. 1	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and *Gazette* 27 Jun 2006 p. 2347)
Reprint 3: The *Land Administration Act 1997* as at 15 Sep 2006 (includes amendments listed above except those in the *Contaminated Sites Act 2003*)			
Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006 s. 6	52 of 2006	6 Oct 2006	25 Sep 2007 (see s. 2 and *Gazette* 25 Sep 2007 p. 4835)
Land Information Authority Act 2006 s. 139	60 of 2006	16 Nov 2006	1 Jan 2007 (see s. 2(1) and *Gazette* 8 Dec 2006 p. 5369)
Financial Legislation Amendment and Repeal Act 2006 s. 4 and Sch. 1 cl. 93	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)

Short title	Number and year	Assent	Commencement
Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007 s. 11 and 90	24 of 2007	12 Oct 2007	s. 11: 24 Oct 2007 (see s. 2(1) and *Gazette* 23 Oct 2007 p. 5645); s. 90: 1 May 2013 (see s. 2(2) and *Gazette* 5 Feb 2013 p. 823)
Petroleum Amendment Act 2007 s. 98	35 of 2007	21 Dec 2007	19 Jan 2008 (see s. 2(b) and *Gazette* 18 Jan 2008 p. 147)
Water Resources Legislation Amendment Act 2007 s. 196	38 of 2007	21 Dec 2007	1 Feb 2008 (see s. 2(2) and *Gazette* 31 Jan 2008 p. 251)
Reprint 4: The *Land Administration Act 1997* as at 4 Jul 2008 (includes amendments listed above except those in the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* s. 90)			
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 83	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Acts Amendment (Bankruptcy) Act 2009 s. 48	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
Land Administration Amendment Act 2009	32 of 2009	26 Nov 2009	s. 1 and 2: 26 Nov 2009 (see s. 2(a)); Act other than s. 1 and 2: 27 Nov 2009 (see s. 2(b))
Statutes (Repeals and Minor Amendments) Act 2009 s. 17	46 of 2009	3 Dec 2009	4 Dec 2009 (see s. 2(b))
Reprint 5: The *Land Administration Act 1997* as at 9 Apr 2010 (includes amendments listed above except those in the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* s. 90)			
Approvals and Related Reforms (No. 3) (Crown Land) Act 2010 Pt. 5	8 of 2010	3 Jun 2010	18 Sep 2010 (see s. 2(b) and *Gazette* 17 Sep 2010 p. 4757)
Public Sector Reform Act 2010 s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and *Gazette* 5 Nov 2010 p. 5563)
Personal Property Securities (Consequential Repeals and Amendments) Act 2011 Pt. 8 Div. 1	42 of 2011	4 Oct 2011	30 Jan 2012 (see s. 2(c) and Cwlth Legislative Instrument No. F2011L02397 cl. 5 registered 21 Nov 2011)

Short title	Number and year	Assent	Commencement
Statutes (Repeals and Minor Amendments) Act 2011 s. 16	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))
Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 27	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and *Gazette* 17 Apr 2015 p. 1371)
Commercial Arbitration Act 2012 s. 45 it. 11	23 of 2012	29 Aug 2012	7 Aug 2013 (see s. 1B(b) and *Gazette* 6 Aug 2013 p. 3677)
Water Services Legislation Amendment and Repeal Act 2012 s. 220	25 of 2012	3 Sep 2012	18 Nov 2013 (see s. 2(b) and *Gazette* 14 Nov 2013 p. 5028)
Reprint 6: The *Land Administration Act 1997* as at 16 Nov 2012 (includes amendments listed above except those in the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* s. 90, *Commercial Arbitration Act 2012*; *Water Services Legislation Amendment and Repeal Act 2012* and the *Road Traffic Legislation Amendment Act 2012*)			
Mental Health Legislation Amendment Act 2014 Pt. 4 Div. 4 Subdiv. 16	25 of 2014	3 Nov 2014	30 Nov 2015 (see s. 2(b) and *Gazette* 13 Nov 2015 p. 4632)
Conservation and Land Management Amendment Act 2015 s. 76	28 of 2015	19 Oct 2015	7 May 2016 (see s. 2(b) and Gazette 6 May 2016 p. 1379-80)
Land Administration (South West Native Title Settlement) Act 2016 Pt. 6	10 of 2016	16 May 2016	6 Jun 2016 (see s. 2(b) and *Gazette* 27 May 2016 p. 1548)
Biodiversity Conservation Act 2016 s. 318(1) and (2)(a)	24 of 2016	21 Sep 2016	1 Jan 2019 (see s. 2(b) and *Gazette* 14 Sep 2018 p. 3305)
Reprint 7: The *Land Administration Act 1997* as at 6 Oct 2017 (includes amendments listed above except those in the *Biodiversity Conservation Act 2016* s. 318)			
Strata Titles Amendment Act 2018 Pt. 3 Div. 9	30 of 2018	19 Nov 2018	1 May 2020 (see s. 2(b) and SL 2020/39 cl. 2)
Land and Public Works Legislation Amendment Act 2023 Pt. 2 (other than s. 6, 29, 30, 31, 82, 88)	4 of 2023	24 Mar 2023	10 Aug 2023 (see s. 2(b) and SL2023/132 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Acts Amendment (Land Administration, Mining and Petroleum) Act 1998 s. 4 and 7 [1]	61 of 1998 (as amended by No. 60 of 1999 s. 7.3)	11 Jan 1999	s. 4 comes into operation on the day on which Pt. 5 of the *Native Title (State Provisions) Act 1999* comes into operation (see s. 2(2)); s. 7 comes into operation on the day on which any of Pt. 3, 4 and 5 of the *Native Title (State Provisions) Act 1999* come into operation (see s. 2(3))
Native Title (State Provisions) Act 1999 s. 7.3	60 of 1999	10 Jan 2000	Operative on earliest of commencement of Pt. 2 (except s. 2.2), Pt. 3 (except s. 3.1) and Pt. 4 (see s. 1.2)
Public Health (Consequential Provisions) Act 2016 Pt. 5 Div. 11	19 of 2016	25 Jul 2016	To be proclaimed (see s. 2(1)(c))
Biodiversity Conservation Act 2016 s. 318(2)(b)	24 of 2016	21 Sep 2016	To be proclaimed (see s. 2(b))
Land and Public Works Legislation Amendment Act 2023 Pt. ~~2~~2 (s. 6, 29, 30, 31, 82, 88)	4 of 2023	24 Mar 2023	To be proclaimed (see s. 2(b))

Other notes

1 The *Acts Amendment (Land Administration, Mining and Petroleum) Act 1998* s. 4 and 7, which had not come into operation on the date as at which this compilation was prepared (see endnotes 1a and 2), will be repealed by the *Native Title (State Provisions) Act 1999* s. 7.3 (Sch. 2 Div. 1 cl. 3), which as at the date of this compilation had also not come into operation.

2 The *Land Administration Amendment Act 2000* s. 8(6), (7) and (8) read as follows:

> (6) Despite section 18(6) of the *Land Administration Act 1997*, an act —

(a) done in contravention of section 18(1), (2), (3) or (4) of that Act on or before the coming into operation of this section;

(b) that, if it had been done after the coming into operation of this section, would have required the approval in writing of the Minister; and

(c) approved in writing by the Minister within 12 months, or such longer period as may be prescribed under that Act, after the coming into operation of this section,

is, and is taken always to have been, as valid and effective as it would have been if the act were done with the approval in writing of the Minister.

(7) Despite section 18(6) of the *Land Administration Act 1997*, an act —

(a) done in contravention of section 18(1), (2), (3) or (4) of that Act on or before the coming into operation of this section; and

(b) that, if it had been done after the coming into operation of this section, would not have required the approval in writing of the Minister,

is, and is taken always to have been, as valid and effective as it would have been if the act were done with the approval in writing of the Minister.

(8) Despite section 18(6) of the *Land Administration Act 1997*, if within 12 months of the day on which this section comes into operation an act is done in contravention of section 18(1), (2), (3), or (4) of that Act as amended by this section that act is valid and effective if, within 12 months of the day on which this subsection comes into operation, the Minister approves the act in writing.

3 The *Mental Health Act 1962* was repealed by the *Mental Health (Consequential Provisions) Act 1996* s. 52.

4 The *Land Act 1898* was repealed by the *Land Act 1933*, which was repealed by the *Land Administration Act 1997* s. 281(1).

5 The *Land Administration Amendment Act 2000* s. 12(4), (5) and (6) read as follows:

(4) Section 46(3a) of the *Land Administration Act 1997* as inserted by subsection (1) applies in respect of any order made under section 46(3)(a) of that Act, whether that order was made on, before, or after the coming into operation of subsection (1).

(5) Section 46(3b) of the *Land Administration Act 1997* as inserted by subsection (1) applies in respect of an order made under section 46(3)(a) of that Act, whether that order was made on, before, or after the coming into operation of subsection (1).

(6) Section 46(7), (8), (9), and (10) of the *Land Administration Act 1997* (the ***Act***), as inserted by section 12(3) of the *Land Administration Amendment Act 2000* applies in respect of —

(a) any order made, or purportedly made, under section 46(1) of the Act;

(b) a lease, sublease, or licence granted, or purportedly granted, by a person referred to in section 46(10) in a manner consistent with the order, any order made under section 46(3)(a) of the Act and the Act; and

(c) any other instrument entered into, or purportedly entered into, by a person referred to in section 46(10) in relation to the care, control and management of a reserve,

on or before the coming into operation of section 12(3) of the *Land Administration Amendment Act 2000* as if section 46(7), (8), (9), and (10) had come into operation on the day on which the Act came into operation.

6 The *Land Administration Amendment Act 2000* s. 18(2) reads as follows:

(2) If the Minister has not caused notice of the registration of an order made under section 58(4) of the *Land Administration Act 1997* to be published in a newspaper circulating in the district of the relevant local government under section 58(5)(c) of the *Land Administration Act 1997*, that failure does not render the order invalid and the order is, and is taken always to have been, as valid and effective as it would have been if the notice had been so published.

7 The *Acts Amendment (Land Administration, Mining and Petroleum) Act 1998* s. 13(3) reads as follows:

(3) The application of section 170 of the *Land Administration Act 1997* as amended by this section extends to a notice of intention, as defined in section 151 of that Act, that is current at the commencement of this section.

[8] The *Prescription Act 1832* (UK) is an Imperial Act adopted in WA by the *Imperial Acts Adopting Act 1836.*

[9] The *Acts Amendment (Land Administration) Act 1997* commenced on 30 Mar 1998. See s. 2 and *Gazette* 27 Mar 1998 p. 1765.

[10] The *Discharged Soldiers Settlement Act 1918* was repealed by the *Miscellaneous Repeals Act 1986.*

[11] The *Permanent Reserves Act 1899* was repealed by the *Native Flora Protection Act 1935*, which was repealed by the *Wildlife Conservation Act Amendment Act 1976.*

[12] The *Rail Freight System Act 2000* Pt. 5 Div. 4 relevantly reads as follows:

Division 4 — *Land Administration Act 1997*

96. The Act amended or modified

The amendments or modifications in this Division are to the *Land Administration Act 1997*.

*[**97-99.** Omitted under the Reprints Act 1984 s. 7(4)(e).]*

100. Sections 187-191 not to apply

Sections 187 to 191 do not apply to or in relation to corridor land.

101. Taking of land to be as if for the conferral of rights

When applying the *Land Administration Act 1997*, the taking of land for the purpose of dealing with it as corridor land under this Act is to be regarded as being for the purpose of, and the land is to be regarded as being required for the purpose of, the grant of interests in the land under this Act, whether or not interests have already been granted under this Act in respect of the land.

[13] The *Land Administration Amendment Act 2000* s. 48, 49 and 50 read as follows:

48. Validation of certain purported offers of leases

(1) If a lessee of a pastoral lease or a former lessee of a pastoral lease —

(a) was given a notice under section 98(11) of the *Land Act 1933*; or

(b) was, after 31 December 1995 and before the coming into operation of the *Land Administration Act 1997*, given notice in writing by the Minister that the Minister would upon the expiration of the pastoral lease extend that lease

or grant to the lessee a new lease of the whole or part of the land the subject of that lease,

then —

(c) that notice is deemed to be, and always to have been, a valid and effective offer of a lease or an extension of a lease, as the case may be;

(d) any acceptance of that offer by the lessee is deemed to be and, in the case of an offer accepted before the coming into operation of this section, always to have been valid and effective; and

(e) any lease or extension of a lease arising from an offer and acceptance referred to in paragraphs (c) and (d) is deemed to be and always to have been valid and effective.

(2) Without limiting the effect of subsection (1) —

(a) the offer is deemed to have been made to the person who at the time the notice was given was the lessee of the lease in respect of which the notice was given;

(b) if the offer was made in relation to a lease by reference to the name of a station and not by reference to the location details of the land contained in the lease or the registered number of the lease under the *Transfer of Land Act 1893*, the offer is deemed to have been made in relation to the land contained in the registered lease applicable to that station at the time the notice was given;

(c) if the offer was for a lease or an extension of the lease, the term of the lease or the extension offered is to be for the same term as the term of the existing pastoral lease;

(d) the annual rent payable for the lease or extension of a lease, as the case may be, is to be and is taken always to have been determined under section 123 of the *Land Administration Act 1997*;

(e) the offer is to be regarded as being accepted in relation to the land contained in the existing pastoral lease at the time the offer is accepted (other than any land excluded under subsections (3) to (6)); and

(f) unless otherwise provided in this subsection, the text and terms and conditions of the lease or extension of the lease are the terms and conditions specified in the notice given to the lessee.

(3) The Minister may for a public purpose exclude land from a lease or extension of lease referred to in subsection (1) by giving a

notice in writing under subsection (4) to the lessee, or the successor in title to the lessee, (the ***lessee***) not later than 2 years after the day on which this section comes into operation.

(4) The notice under subsection (3) is to contain the following information —

(a) a description of the area of land to be excluded from the lease;

(b) the reason for the land being excluded from the lease;

(c) any reduction in the rent payable under the lease as a result of the exclusion of the land from the lease;

(d) any proposed variation in the conditions of the lease as a result of the exclusion of the land from the lease; and

(e) that the land is to be excluded from the lease or extension concerned upon the commencement of the lease or extension, as the case may be.

(5) If a lessee is given a notice under subsection (4) the lessee may —

(a) accept the conditions contained in the notice;

(b) withdraw from the agreement to lease or to extend the lease; or

(c) enter into negotiations with the Minister on the area to be excluded from the lease or the rent to be paid as a result of the exclusion of the land from the lease.

(6) If agreement is not reached on the matters referred to in subsection (5)(c) by the day that is 2 years, or such other longer period as may, for the purposes of this section, be prescribed under the *Land Administration Act 1997*, after the day on which the notice was given to the lessee (the ***final day***), the lessee is deemed to have withdrawn from the agreement to lease or to extend the lease on the final day.

(7) If land is not to be excluded from a lease or extension of a lease referred to in subsection (1) for a public purpose under this section, the Minister may give notice in writing to that effect to the lessee not later than 2 years after the day on which this section comes into operation.

(8) If a notice is not given by the day specified in subsection (3) no land may be excluded from the lease under that subsection.

(9) In this section —

existing pastoral lease means a pastoral lease subsisting under the *Land Act 1933* immediately before the appointed day as defined in section 3(1) of the *Land Administration Act 1997*;

public purpose has the same definition as it has in section 143(10) of the *Land Administration Act 1997*.

49. Pastoral leases: extension of period for acceptance of offer

If —

(a) a notice has been given, or purported to be given, under section 98(11) of the *Land Act 1933*; and

(b) the offer or purported offer has not been accepted under section 98(11)(c) of the *Land Act 1933*,

the lessee, or the successor in title to the lessee, may accept the offer not later than the day that is 12 months after the day on which this section comes into operation or such other day as may, for the purposes of this section, be prescribed under the *Land Administration Act 1997*.

50. Offers in relation to certain leases

If a person is given a notice under section 143(6)(d) of the *Land Administration Act 1997* then the notice is a valid and effective offer of a lease or an extension of the lease, as the case may be, despite —

(a) the fact that the person to whom the notice was given was not the lessee at the time the notice was given;

(b) the fact that the offer was made in relation to a lease by reference to the name of a station and not by reference to the certificate of Crown land title, qualified certificate of Crown land title or other location details of the land contained in the lease or the registered number of the lease under the *Transfer of Land Act 1893*, in which case the offer is deemed to have been made in relation to the land contained in the registered lease applicable to that station at the time the notice was given;

(c) the fact that the offer of a lease or an extension of the lease did not state the term of the lease or extension or was not for the same term as the term of the existing pastoral lease, in which case the term of the lease or extension of lease is deemed to have been made for the same term as the term of the existing pastoral lease;

(d) the notice stating that rent reviews during the lease or the extension of the lease are to be under section 123(4) of the *Land Administration Act 1997*, in which case the annual rent payable for the lease or extension of a lease, as the case may be, is to be and is taken always to have been determined under section 123 of the *Land Administration Act 1997*; and

(e) the notice not stating that the land the subject of the offer is the land contained in the existing pastoral lease other than any land excluded under section 143(6d) to (6i), in which case the offer is to be regarded as being accepted in relation to the land contained in the existing pastoral lease at the time the offer is accepted (other than any land excluded under those subsections),

and, unless otherwise provided in this subsection, the text and terms and conditions of the lease or extension of the lease are the terms and conditions specified in the notice given to the lessee.

14 The *Land Administration Amendment Act 2000* s. 52 reads as follows:

52. Reserve No. 1667

(1) Reserve No. 1667 in the City of Nedlands, classified as a class A reserve, comprising 8.2005 hectares dedicated to the purpose of an "Old Men's Depot site", is amended, despite sections 42 and 43 of the *Land Administration Act 1997*, by changing the purpose of the Reserve to "Retirement village, parks and recreation, community, and ancillary commercial purposes".

(2) The Reserve is taken to have been reserved under section 41 of the *Land Administration Act 1997* for the purpose specified in subsection (1).

(3) The Minister is to make an order that is to be taken to be an order made by the Minister under the *Land Administration Act 1997* that the purpose of Reserve No. 1667 is changed in the manner referred to in subsection (1).

15 The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 26 was deleted by the *Criminal Law and Evidence Amendment Act 2008* s. 77(13).

16 The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28, 33 and 42 deal with certain transitional issues some of which may be relevant for this Act.

17 The *State Administrative Tribunal Regulations 2004* r. 33 reads as follows:

33. *Land Administration Act 1997*

(1) In this regulation —

commencement day means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 67 comes into operation.

(2) If a matter has been partly or fully heard, but not determined, by a Compensation Court under the *Land Administration Act 1997* immediately before the commencement day —

(a) the Act section 167(4)(b) does not apply; and

(b) the matter is to continue to be dealt with as if the written law applicable to the matter in force immediately before the commencement day continued to apply.

[18] The *Acts Amendment (Court of Appeal) Act 2004* Sch. 1 cl. 22 was deleted by the *Criminal Law and Evidence Amendment Act 2008* s. 75(4).

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